CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
TUESDAY, JANUARY 17, 2023
5:00 P.M.

A. 1. **CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN**

A. 2. **PLEDGE OF ALLEGIANCE LED BY COUNCIL MEMBER PAMELA L. HOWETH**

A. 3. **INVOCATION BY COUNCIL MEMBER PAMELA L. HOWETH**

A. 4. **APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF JANUARY 3, 2023.**

Citizen Comments

B. 1. **CITIZEN COMMENTS**
During this meeting, the City Council welcomes public comment **only** on agenda items listed under the Open Meeting portion of the agenda, in accordance with Texas Government Code Section 551.007. For items not listed on the agenda, those matters may be discussed with City staff during regular business hours, or with the Mayor or any Council member by contacting them at times other than at City Council meetings.

Consent Agenda

C. 1. **CONSENT AGENDA**
Asterisked (*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately

Resolutions

D. 1. **RESOLUTION NO. 7013**
Authorizing Execution of a Standard Form of Agreement Between Owner (City of Sherman) and Architect (Hidell and Associates Architects, Inc.) for Professional Services Relating to the Renovation and Addition for Fire Station No. 1.

D. 2. **RESOLUTION NO. 7014**
Authorizing Execution of a Professional Services Agreement Between Owner (City of Sherman) and Architect (M. Arthur Gensler Jr. & Associates, Inc.) for the Design of the New Sherman City Hall

D. 3. **RESOLUTION NO. 7015**
Authorizing Execution of an Interlocal Memorandum of Understanding between the City of Sherman and Grayson County Sheriff's Office to Establish Guidelines Regarding the Housing and Handling of those Persons Incarcerated in the Grayson County Jail for the City of Sherman Class "C" Charges only

D. 4. **RESOLUTION NO. 7016**

Determining a Public Necessity to Acquire by Eminent Domain a Sanitary Sewer Easement and Temporary Construction Easement for Public Use, Including the Construction, Expansion, Access, Repair and Maintenance of Public Wastewater Improvements, Consisting of Two Tracts of Land Comprising 0.054 acres (Sanitary Sewer Easement) and a 20-foot area on Both Sides of Said 0.054 acres for a Temporary Construction Easement owned by Susan M. Brannum According to Volume 5531, Page 816 of the Official Public Records of Grayson County, Texas, Within the Preston Kitchen Survey, Abstract No. 667, Grayson County, Texas, as Deemed Necessary by the City Manager or His Designee; Giving Notice of an Official Determination to Acquire the Sanitary Sewer Easement and Temporary Construction Easement for Public Use by Eminent Domain for Such Uses; Authorizing the City Manager of the City of Sherman, Texas, to Establish Procedures for Acquiring the Easements, Offering to Acquire the Ewasments, Voluntarily, from the Landowner Through the Making of Bona Fide Offers; Appropriating Funds; Providing for Repealing, Savings and Severability Clauses; and Providing for an Effective Date

D. 5. **RESOLUTION NO. 7017**

Determining a Public Necessity to Acquire by Eminent Domain a Sanitary Sewer Easement and Temporary Construction Easement for Public Use, Including the Construction, Expansion, Access, Repair and Maintenance of Public Wastewater Improvements, Consisting of Two Tracts of Land Comprising 1.693 acres (Temporary Construction Easement) and 1.359 acres (Sanitary Sewer Easement) owned by HMI-Sherman 592, LLC, According to Instrument Number 2022-28337 of the Official Public Records of Grayson County, Texas, Within the Sherod Dunman Survey, Abstract No. 329, and the Winifred Bailey Survey, Abstract No. 64, Grayson County, Texas, as Deemed Necessary by the City Manager or His Designee; Giving Notice of an Official Determination to Acquire the Sanitary Sewer Easement and Temporary Construction Easement for Public Use by Eminent Domain for Such Uses; Authorizing the City Manager of the City of Sherman, Texas, to Establish Procedures for Acquiring the Easements, Offering to Acquire the Easements, Voluntarily, from the Landowner Through the Making of Bona Fide Offers; Appropriating Funds; Providing for Repealing, Savings and Severability Clauses; and Providing for an Effective Date

D. 6. **RESOLUTION NO. 7018**

Approving and Adopting an Amendment to the Articles of Incorporation of the Sherman Economic Development Corporation, A Type A Economic Development Corporation, Operating Pursuant to Chapter 504 of the Texas Local Government Code And Providing for an Immediate Effective Date

D. 7. **** RESOLUTION NO. 7019***

Authorizing Execution of an Encroachment Agreement with Hope on Houston for the Encroachment of an Existing Building within the Proposed Platted 10-foot Utility Easement along the South and West Property Lines of Hope on Houston Addition and a Proposed 20-Foot Wastewater Easement, Approved by City Council on January 3, 2022, to be Filed in the Plat Records, Grayson County, Texas, Locally Known as 901 E. Houston Street in the City of Sherman, Texas

D. 8. **** RESOLUTION NO. 7020***

Abandoning One (1) Sixteen Foot (16') Utility Easement Located in Lots 1-4, Block 3 of Replat of Bright Star Addition, Volume 3, Page 80, Plat Records, Grayson County, Texas, and Being More Particularly Described on the Exhibit "A" Attached Hereto and Made a Part Hereof for all Purposes, which Utility Easements is Established in Volume 3, Page 80 of the Plat Records of Grayson County, Texas

D. 9. **** RESOLUTION NO. 7021***

Authorizing the Purchase of 1,404 new 95 Gallon EG Carts that will be used by the Solid Waste Department.

D. 10. **** RESOLUTION NO. 7022***

Authorizing Execution of an Agreement for Fire Protection Services between Grayson County, Texas and the City of Sherman, Texas for the Period of October 1, 2022 through June 30, 2023

D. 11. **** RESOLUTION NO. 7023***

Authorizing Execution of an Agreement for Ambulance Services with Grayson County for the Period of October 1, 2022 through June 30, 2023

Requests to Advertise

E. 1. **** REQUEST TO ADVERTISE***

Purchase Multiple Fleet Vehicles for Multiple City Departments

E. 2. **** REQUEST TO ADVERTISE***

Annual Supply of Water Chemicals

E. 3. **** REQUEST TO ADVERTISE***

Contracting with a Construction Manager-at-Risk (CMAR) for Renovations and Additions to Fire Station No. 1

Other Business

F. 1. **OTHER BUSINESS**

Receive Quarterly Progress Report from Sherman Economic Development Corporation President Kent Sharp

F. 2. **** OTHER BUSINESS***

~~Consider the Request of~~ Jan Fletcher to Temporarily Close Certain Streets for the Black History Month Freedom Parade on Saturday, February 11, 2023, at 10:00am

Consider Board/Commission Appointments

G. 1. **APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS**

(a) Keep Sherman Beautiful Commission (5)

H. **COUNCIL COMMENTS**

Executive Session

I. 1. **EXECUTIVE SESSION**

In accordance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, the City Council may hold an Executive Session if the discussion of any of the items identified in this agenda, or any of the items identified below, concern one or more of the following:

Tex. Gov't Code § 551.071	Seeking the advice of its attorney about pending or contemplated litigation, settlement offers or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act.

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code

Tex. Gov't Code § 551.072	Deliberating the purchase, exchange, lease or value of real property if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.
Tex. Gov't Code § 551.073	Deliberating a negotiated contract for a prospective gift or donation to the City if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.
Tex. Gov't Code § 551.074	Deliberating the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing.
Tex. Gov't Code § 551.076	Deliberating the deployment, or specific occasions for implementation, of security personnel or devices or a security audit.
Tex. Gov't Code § 551.087	Discussing or deliberating commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay or expand in or near the City and with which the City is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect.
Tex. Gov't Code § 551.089	Deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementation of security personnel, critical infrastructure or security devices.

The Council reconvenes into General Session

J. 1. OPEN MEETING

Reconvene into Open Meeting and Consider Action, if any, on items discussed in Executive Session

K. ADJOURNMENT

COUNCIL CALENDAR

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code

CERTIFICATION

I, the undersigned authority, do hereby certify that the above Notice of Regular Meeting of the City Council of the City of Sherman is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board at City Hall of said City of Sherman, Texas, a place convenient to the public, and said notice was posted on Friday. January 13, 2023 at 4:00 p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 13th day of January 2023.
City of Sherman, Texas

_____
City Clerk

The above agenda schedule represents an estimate of the order for the indicated items and is subject to change at any time.

All agenda items are subject to final action by the City Council.

An unscheduled closed executive session may be held if the discussion of any of the above agenda items concerns the purchase, exchange, lease or value of real property; the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; the deployment or use of security personnel or equipment; or requires consultations with the City Attorney.

At the discretion of the City Council, non-agenda items under the headings of "Citizens Requests", "Media Questions", and "Council Concerns" may be presented to the Council for informational purposes; however, by law, the Council shall not discuss, deliberate, or vote upon such matters except that a statement of specific factual information, a recitation of existing policy, and deliberations concerning the placing of the subject on a subsequent agenda may take place.

The City Attorney has approved the Executive Session items on this agenda.

PERSONS WITH DISABILITIES, WHO PLAN TO ATTEND THIS MEETING AND WHO MAY NEED ASSISTANCE, ARE REQUESTED TO CONTACT LINDA ASHBY AT (903) 892-7204, TWO (2) WORKING DAYS PRIOR TO THE MEETING SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.

Mayor	Deputy Mayor	Council Members	
David Plyler	Josh Stevenson	Henry Marroquin, Council-At-Large, PL #1	Josh Stevenson, Council – District #2
		Juston Dobbs, Council-At-Large, PL #2	Pamela L. Howeth, Council – District #3
		Shawn C. Teamann, Council – District #1	Daron Holland, Council – District #4

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **A. 4.**

Meeting Date: 01/17/2023

Approved By: Robby Hefton, City Manager

Caption:

APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF JANUARY 3, 2023.

Attachments

January 3, 2023

STATE OF TEXAS §

January 3, 2023

COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Regular Meeting of the City Council of the City of Sherman, Grayson County, Texas was begun and held in the Council Chambers of City Hall on January 3, 2023.

MEMBERS PRESENT: **MAYOR DAVID PLYLER; DEPUTY MAYOR JOSH STEVENSON COUNCIL MEMBERS DOBBS, HOLLAND, HOWETH, MARROQUIN, TEAMANN.**

MEMBERS ABSENT: **NONE.**

CALL TO ORDER — **CALL TO ORDER**

Mayor Plyler called the meeting to order at 5:00 p.m. The Pledge of Allegiance and Invocation were led by Council Member Daron Holland.

APPROVE MINUTES — **APPROVE MINUTES**

The Council reviewed the Minutes of the Regular City Council Meeting of December 5, 2022, and the Called Meeting of December 12, 2022. Council Member Holland moved to approve the Minutes, as presented; Second by Council Member Dobbs; All present voted AYE.
MOTION CARRIED.

CITIZEN'S COMMENTS

CONSTRUCTION MANAGER AT RISK FOR CITY HALL FACILITY — **CITY HALL FACILITY CMAR**

Peter Tracy, 705 S. Valentine, addressed the agenda item for the Request to Advertise for a Construction Manager at Risk for the City Hall Facility. He asked if plans for the project had already been drawn up, if land had been purchased, and what the justification was for getting a construction manager for a new City Hall.

Mayor Plyler said the Construction Manager will assist the City in budgeting for a proposed location, and work through a process of finding the location, identifying the need, doing a space analysis study, looking at each department to determine how much space they really need, and how much space they'll need in five years.

Mr. Tracy asked if the new facility would be in the immediate general area or at another location. Mayor Plyler said it could be in the general area or in another location.

CONSENT AGENDA — **CONSENT AGENDA**

Asterisked (*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately.

The Council reviewed the Consent Agenda. Council Member Howeth moved to approve the Consent Agenda, as presented. Second by Deputy Mayor Stevenson. All present voted AYE.

CONSENT AGENDA — **CONSENT AGENDA**

Double Asterisked (**) items are considered to be routine and will be enacted in one motion, subject to the Staff Review Letter, without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately.

The Council reviewed the Consent Agenda. Council Member Teamann moved to approve the Consent Agenda, subject to the Staff Review Letter. Second by Council Member Howeth. All present voted AYE.

Mayor Plyler introduced Ordinance No. 6558 and called for a public hearing: — **ORD 6558 SUP FOR MINI-WAREHOUSE (920 S. FM 1417)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A MINI-WAREHOUSE AND OUTDOOR RECREATIONAL VEHICLE (RV) STORAGE IN A C-1 (RETAIL BUSINESS) DISTRICT/0-1.1 (FM HIGHWAY 1417) OVERLAY DISTRICT LOCATED AT 920 SOUTH FM 1417 (HERITAGE PARKWAY), BEING 2.29 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625, AND BEING PART OF LOT 3-R, BLOCK ONE OF THE REPLAT OF LOTS 2 & 3, BLOCK ONE OF CHIEF'S ADDITION (REESE AND LORIBETH SHAFFER, OWNERS; NBS DRAFTING AND DESIGN, ARCHITECTURAL DESIGNER; AND HELVEY-WAGNER SURVEYING INC., SURVEYOR) PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00.

Rob Rae, Director of Development Services, said this is a Specific Use Permit for a mini-warehouse and RV storage. The Planning and Zoning Commission recommended approval of the Specific Use Permit, with an additional condition that trees and shrubs, that would achieve site distance along Quail Run, be installed.

One citizen complained that they would be "looking at RV storage from the back of their home." This resulted in the additional condition being added.

No citizens appeared before the City Council to discuss Ordinance No. 6558.

Mayor Plyler introduced Ordinance No. 6559 and called for a public hearing: — **ORD 6559 SUP FOR LOAN OFFICE (701 W. HOUSTON)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A LOAN OFFICE IN A C-1 (RETAIL BUSINESS) DISTRICT LOCATED AT 701 W. HOUSTON STREET, BEING 0.086 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 (JEJE HOLDINGS, LLC, OWNERS; WILLIAM BAIN, FIRST TEXAS NATIONAL BANK, TENANT; AND COPLEY LAND SURVEYING, SURVEYOR) PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00.

Mr. Rae said this item is for a Specific Use Permit to allow a loan office at this location. The Planning and Zoning Commission recommended approval of the Specific Use Permit, with the condition that it be tied to the bank that was making the request, and with a one-year time limit.

He said the staff did recommend that the Specific Use Permit be denied, due to it's location within the floodway.

William Bain, 11810 Oak Ridge Drive, Kingston, Oklahoma
Mr. Bain appeared representing First Texas National Bank, and said the location is in the flood plain. However, it is in current use and anyone else could take possession of the building and use it. He is asking for use of the building for a two-person operation, and there is currently two parking spaces.

No other citizens appeared before the City Council to discuss Ordinance No. 6559.

The Pulic Hearing was closed.

Ordinance 6558 — **ORD 6558 SUP FOR MINI-WAREHOUSE (920 S. FM 1417)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A MINI-WAREHOUSE AND OUTDOOR RECREATIONAL VEHICLE (RV) STORAGE IN A C-1 (RETAIL BUSINESS) DISTRICT/0-1.1 (FM HIGHWAY 1417) OVERLAY DISTRICT LOCATED AT 920 SOUTH FM 1417 (HERITAGE PARKWAY), BEING 2.29 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625, AND BEING PART OF LOT 3-R, BLOCK ONE OF THE REPLAT OF LOTS 2 & 3, BLOCK ONE OF CHIEF'S ADDITION (REESE AND LORIBETH SHAFFER, OWNERS; NBS DRAFTING AND DESIGN, ARCHITECTURAL DESIGNER; AND HELVEY-WAGNER SURVEYING INC., SURVEYOR) PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00.

Council Member Dobbs asked if a storage unit on FM 1417 was within the City's Master Plan. Mr. Rae said it is consistent because it is a commercial business and that's what is designated on the Future Land Use Plan, as a compatible use.

Council Member Teamann said they have been "moving dirt," and he asked if that was preparation groundwork. Mr. Rae wasn't aware of any groundwork being done.

Reese Shaffer, 1825 N. Highland
Mr. Shaffer is the owner and said the groundwork in progress is for the apartment complex that is located behind their facility. They have not started any groundwork.

Ordinance 6559 — **ORD 6559 SUP FOR LOAN OFFICE (701 W. HOUSTON)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT

TO ALLOW A LOAN OFFICE IN A C-1 (RETAIL BUSINESS) DISTRICT LOCATED AT 701 W. HOUSTON STREET, BEING 0.086 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 (JEJE HOLDINGS, LLC, OWNERS; WILLIAM BAIN, FIRST TEXAS NATIONAL BANK, TENANT; AND COPLEY LAND SURVEYING, SURVEYOR) PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00.

Mayor Plyler verified that this was a temporary situation. He said they closed on property to build a new bank, located behind Taco Cabana. In the next couple of months, they will be submitting plans for the new facility. Their builder is confident it will take four months to build the bank. He said they should be in the new location by the middle of the fourth quarter. Therefore, Mr. Bain said the year approval on the Specific Use Permit would be perfect.

Mayor Plyler asked if the Planning and Zoning Commission discussed limiting the Specific Use Permit to one year. Mr. Rae said they did limit it to one year.

Jonathan Earnhart, 110 S. Houston Avenue, Denison
Mr. Earnhart is the owner of the building that the loan office would be occupying. He said the building is not in the flood zone, but some of the property is. He said the parking lot is above Houston Street.

He added that even though the loan office plans to be out of the facility in one year, they have it leased for two years. He asked the Council to consider a two-year SUP, which would match their lease. Also, if there were construction delays, the additional year would cover that timeframe.

Robby Hefton, City Manager, said the Council could approve a one-year Specific Use Permit that would automatically renew for a two-year total. He added that the permit would be specific only to First Texas National Bank, so whenever they didn't occupy the property, the SUP would "go away."

Council Members verified that it is currently one year, and tied to the bank.

ACTION TAKEN.

Motion by Deputy Mayor Stevenson to adopt Ordinance No. 6558, as presented, and Ordinance No. 6559, but with the stipulation that it be extended to two years. Second by Council Member Teamann.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

RESOLUTION NO. 7008 – APPROVING THE GREATER TEXOMA UTILITY AUTHORITY'S INTENTION TO CONTRACT WITH ARCHER WESTERN CONSTRUCTION, LLC FOR THE SHERMAN WTP EXPANSION PACKAGE 1 PROJECT — **RES 7008 WATER TREATMENT PLANT EXPANSION**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING THE GREATER TEXOMA UTILITY AUTHORITY'S INTENTION TO CONTRACT WITH ARCHER WESTERN CONSTRUCTION, LLC FOR THE SHERMAN WTP EXPANSION PACKAGE 1 PROJECT.

Tom Pruitt, Utility Engineer, said this project would expand the Water Treatment Plant, to an additional five million gallons per day capacity. Bid openings were held December 8, 2022, and there were 21 general contractors, 31 subcontractors, and 46 suppliers that bid.

On December 19, 2022, the Greater Texoma Utility Authority approved awarding the contract, contingent on the City of Sherman's recommendation.

He said Archer Western Construction is the number one wastewater contractor, and the number two water contractor in the United States. The City's engineer, Garver, has reviewed their background and recommend approval of the contract.

If the Council approves, the contract will be executed and the project will start as soon as possible.

Council Member Teamann said the bid came in $750,000 less than the budget.

Mr. Hefton said there will be several of these approvals coming before the Council in the next few months. This is phase one of multiple phases of projects for the most recent expansion.

ACTION TAKEN.

Motion by Deputy Mayor Stevenson to approve Resolution No. 7008, as presented. Second by Council Member Holland.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

RES 7009
WWTP OPERATIONS BUILDING & REMODEL

RESOLUTION NO. 7009 – ACCEPTING THE CONTRACT WITH PIAZZA CONSTRUCTION, LLC AS COMPLETE FOR THE CONSTRUCTION OF THE WWTP OPERATIONS BUILDING ADDITION & REMODEL

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ACCEPTING THE CONTRACT WITH PIAZZA CONSTRUCTION, LLC AS COMPLETE FOR THE CONSTRUCTION OF THE WWTP OPERATIONS BUILDING ADDITION & REMODEL.

Mr. Hefton asked the Council not to take action on this item, because there is still some work to do with the architect on this project. The information was received this past week, but the item will be brought back to Council in the future for approval.

RES 7010 ENCROACHMENT FOR RETAINING WALL (1103 S. FM 1417)

RESOLUTION NO. 7010 – AUTHORIZING EXECUTION OF AN ENCROACHMENT AGREEMENT WITH CREST VENTURES, LP FOR THE ENCROACHMENT OF A RETAINING WALL WITHIN THE PLATTED 10 FOOT UTILITY EASEMENT ALONG THE NORTH, EAST, AND SOUTH PROPERTY LINES OF HERITAGE COURT ADDITION, FILED OF RECORD IN INSTRUMENT NO. 2021-108, PLAT RECORDS, GRAYSON COUNTY, TEXAS, LOCALLY KNOWN AS 1103 S. FM 1417 IN THE CITY OF SHERMAN, TEXAS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENCROACHMENT AGREEMENT TO CREST VENTURES, LP FOR THE ENCROACHMENT FOR A RETAINING WALL WITHIN THE PLATTED 10-FOOT UTILITY EASEMENT ALONG THE NORTH, EAST, AND SOUTH PROPERTY LINES OF HERITAGE COURT ADDITION, FILED IN INSTRUMENT NO. 2021-108, PLAT RECORDS, GRAYSON COUNTY, TEXAS, LOCALLY KNOWN AS 1103 S. FM 1417 IN THE CITY OF SHERMAN.

CONSENT AGENDA.

RES 7011 RESIDENTIAL TAX ABATEMENT (2017 S. MONTGOMERY ST)

RESOLUTION NO. 7011 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH M&G HOME BUILDERS LLC FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 2017 SOUTH MONTGOMERY STREET WITHIN CITY OF SHERMAN REINVESTMENT ZONE, NUMBER TEN (#10)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH M&G HOME BUILDERS LLC FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 2017 SOUTH MONTGOMERY STREET WITHIN CITY OF SHERMAN REINVESTMENT ZONE, NUMBER TEN (#10).

CONSENT AGENDA.

RES 7012 ANNUAL SUPPLY OF TIRES

RESOLUTION NO. 7012 – AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH DAYTON TIRE SALES, INC. FOR AN ANNUAL SUPPLY OF LIGHT TRUCK, PASSENGER, AND OTG/COMMERCIAL TIRE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH DAYTON TIRE SALES, INC, FOR AN ANNUAL SUPPLY OF LIGHT TRUCK, PASSENGER, AND OTR/COMMERCIAL TIRES.

CONSENT AGENDA.

REQ TO ADVERTISE VEHICLE PURCHASE

REQUEST TO ADVERTISE

PURCHASE OF TWO (2) THREE-QUARTER TON TRUCKS AND ONE (1) HALF TON TRUCK FOR THE PARKS MAINTENANCE DEPARTMENT AND (1) HALF TON TRUCK FOR THE ENGINEERING DEPARTMENT

The City Council approved the purchase of two three-quarter ton truck and one half ton truck for the Parks Maintenance Department and one half ton truck for the Engineering Department.

CONSENT AGENDA.

PECAN GROVE ATHLETIC COMPLEX

PURCHASE AND INSTALLATION OF BALLFIELD AND TRAIL LIGHTING AT PECAN GROVE ATHLETIC COMPLEX

The City Council approved the purchase and installation of ballfield and trail lighting at Pecan Grove Athletic Complex. The lighting will be added to four baseball/softball fields and approximately one mile of walking trail.

Funding for the improvements was approved in the FY 2022-2023 Budget, and part of the Capital Improvement Program.
CONSENT AGENDA.

NEW CITY HALL

CONTRACTING WITH A CONSTRUCTION MANAGER-AT-RISK (CMAR) FOR THE CONSTRUCTION OF A NEW CITY HALL FACILITY

The City Council approved contracting with a Construction Manager-at-Risk for the construction of a new City Hall Facility, to be located at 221 W. Mulberry Street.

The current City Hall was opened in 2000, after being renovated from its previous use as the City's post office. The building has provided offices for several municipal functions, but has never housed everything that would typically be in a City Hall.

In the past five years, the City has experienced unprecedented growth, with the last year bringing in billions of dollars of industrial investments. This has resulted in an increase in City staff, to the point that the current City Hall is too small.

The City has used the CMAR process on previous projects, and it has proven effective and efficient.
CONSENT AGENDA.

OTHER BUSINESS

APPROVE FINAL PLAT BROWN'S DRIPPING SPRINGS ADDITION (1022 BROWN RD)

FINAL PLAT APPROVAL OF BROWN'S DRIPPING SPRINGS ADDITION, BEING 3.959 ACRES IN THE JOHN McCLENIHAN SURVEY, ABSTRACT NO. 789; JON AND LAVONDA BROWN, OWNER AND UNDERWOOD DRAFTING & SURVEYING, SURVEYOR (1022 BROWN ROAD)

The City Council approved the Final Plat of Brown's Dripping Springs Addition, a 3.959 acre tract, located at 1022 Brown Road, in the City's Extra Territorial Jurisdiction. The owner would like to plat the property into two lots for residential development.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

APPROVE REPLAT EARNHARTBUILT'S 8TH ADDITION (1400 BLOCK OF W. LAMBERTH RD)

REPLAT APPROVAL OF EARNHARTBUILT'S 8TH ADDITION, BEING 4.121 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 AND ALSO BEING ALL OF LOT 6, BLOCK 8 TURTLE CREEK SOUTH ADDITION, SECTION 3; EARNHARTBUILT, LLC, OWNER AND COPLEY LAND SURVEYING, SURVEYOR (1400 BLOCK OF WEST LAMBERTH ROAD)

The City Council approved the Replat of Earnhartbuilt's 8th Addition, a 4.121 acre tract, located in the 1400 block of West Lamberth Road. The property is zoned R-1 (One-Family

Residential) District. The owner would like to plat the property into two lots for residential development.

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

APPROVE REPLAT McCONNELL ADDITION (5202 WILDER TRAIL)

REPLAT APPROVAL OF McCONNELL ADDITION BEING 2.481 ACRES IN THE FIELDING BACON SURVEY, ABSTRACT NO. 119, AND BEING ALL OF LOT 8 OF FRIENDSHIP RANCH ADDITION; SUSAN McCONNELL, OWNER AND UNDERWOOD DRAFTING & SURVEYING, INC, SURVEYOR (5202 WILDER TRAIL)

The City Council approved the Replat of McConnell Addition, a 2.481 acre tract, located at 5202 Wilder Trail. The property is zoned SF-1 (Single Family Residential) District, and partially located in the City's Extra Territorial Jurisdiction. The owner would like to plat the property into one lot for residential development.

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

APPROVE REPLAT MEYERS COMMERCIAL ADDITION (120 RIDGEVIEW RD)

REPLAT APPROVAL OF MEYERS COMMERCIAL ADDITION, BEING 1.951 ACRES IN THE FIELDING BACON SURVEY, ABSTRACT NO. 119 AND THE WILLIAM THOMPSON SURVEY, ABSTRACT NO. 1210, AND BEING ALL OF LOT 1 OF TIMBER VIEW ESTATES; WANDA LOUISE MEYERS ESTATE, OWNER; KENNETH MEYERS, REPRESENTATIVE; UNDERWOOD DRAFTING & SURVEYING, SURVEYOR (120 RIDGEVIEW ROAD)

The City Council approved the Replat of Meyers Commercial Addition, a 1.951 acre tract, located at 120 Ridgeview Road. The property is zoned R-1 (One-Family Residential) District. The owner would like to plat the property into two lots for residential and commercial development.

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

APPROVE FINAL PLAT LUELLA CROSSING, PHASE 2 (200-600 BLOCKS LUELLA RD)

FINAL PLAT APPROVAL OF LUELLA CROSSING PHASE 2, BEING 48.487 ACRES IN THE SHARROD DUNMAN SURVEY, ABSTRACT NO. 329; SHERMAN 2, LLC, OWNER; LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD, DEVELOPER; AND KIMLEY-HORN AND ASSOCIATES, INC., SURVEYOR/ENGINEER (200-600 BLOCKS LUELLA ROAD)

The City Council approved the Final Plat of Luella Crossing, Phase 2, a 48.487 acre tract, located in the 200 to 600 blocks of Luella Road. The owner would like to plat the property for residential development.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

REPLAT APPROVAL OF SHERMAN III ADDITION, BEING 21.880 ACRES IN THE WILLIAM MARTIN SURVEY, ABSTRACT NO. 765, AND BEING ALL OF LOT 3 OF THE REPLAT OF LOTS 2R & THREE, SHERMAN INDUSTRIAL DEVELOPMENT ADDITION; SEDCO (SHERMAN ECONOMIC DEVELOPMENT CORPORATION), OWNER; KENT SHARP, REPRESENTATIVE; AND UNDERWOOD DRAFTING & SURVEYING, SURVEYOR (305-405 BLOCKS WEST PROGRESS DRIVE)

APPROVE REPLAT (305-405 BLOCKS W. PROGRESS DR)

The City Council approved the Replat of Sherman III Addition, a 21.800 acre tract, located in the 305 to 405 blocks of West Progress Drive, in the BIP, Blalock Industrial Park. The property is owned by the Sherman Economic Development Corporation, and they would like to plat it into two lots for commercial development.

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

REPLAT APPROVAL OF LIAM'S ADDITION, BEING 0.289 ACRES IN THE SAMUEL BLAGG SURVEY, ABSTRACT NO. 56, BEING ALL OF LOT 7 AND THE NORTH 40 FT. OF LOT 8, BLOCK ONE, WAKEFIELDS ADDITION; M&G HOME BUILDERS, LLC, OWNER AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR (1002 SOUTH MONTGOMERY STREET)

APPROVE REPLAT LIAM'S ADDITION (1002 S. MONTGOMERY ST)

The City Council approved the Replat of Liam's Addition, a 0.289 acre tract, located at 1002 South Montgomery Street. The property is zoned R-2 (Multi-Family Residential) District. The owner would like to plat the property into one lot for residential development.

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

REPLAT APPROVAL OF DHESI ADDITION, LOT 2R, BLOCK 3, BEING 0.217 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763, AND ALSO BEING PART OF LOTS 2, 3, AND 4, BLOCK 3, GREENMOUNT 2ND ADDITION; DHESI INVESTMENT, LLC, OWNER AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR (310 NORTH CARL STREET)

APPROVE REPLAT DHESI ADDITION (310 N. CARL ST)

The City Council approved the Replat of the Dhesi Addition, a 0.217 acre tract, located at 310 North Carl Street. The property is zoned R-1 (One-Family Residential) District. The owner would like to plat the property into one lot for residential development.

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

FINAL PLAT APPROVAL OF RALEIGH ACRES, LOTS 1 AND 2, BLOCK 1, BEING 9.991 ACRES IN THE JASON STAMPS SURVEY, ABSTRACT NO. 1115; JOHN AND MARY RALEIGH, OWNER AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR (5211 OB GRONER ROAD)

APPROVE FINAL PLAT RALEIGH ACRES (5211 OB GRONER RD)

The City Council approved the Final Plat of Raleigh Acres, a 9.991 acre tract, located at 5211 OB Groner Road. The property is zoned

R-1 (One-Family Residential) District. The property owners would like to plat the property into two lots for residential development.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

REPLAT APPROVAL OF RENDEZVOUS ADDITION, BEING 0.969 ACRES IN THE SMITH McGLOTHLIN SURVEY, ABSTRACT NO. 808, AND BEING PART OF LOT 6, AND ALL OF LOTS 7 & 8, BLOCK 7, HIGHLAND PARK ADDITION, DJT AND JJT HOLDINGS, LLC, OWNER; THOMAS JOSEPH ALTLAND, PARTNER/MEMBER; AND PRESTON TRAIL LAND SURVEYING, SURVEYOR (2111 TEXOMA PARKWAY)

APPROVE REPLAT RENDEZVOUS ADDITION (2111 TEXOMA PKWY)

The City Council approved the Replat of the Rendezvous Addition, a 0.969 acre tract, located at 2111 Texoma Parkway. The property is zoned C-2 (General Commercial) District. The property owner would like to plat the property into one lot for commercial development.

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

REPLAT APPROVAL OF SHERMAN CROSSROADS, PHASE II, BEING 4.474 ACRES IN THE PRESTON KITCHENS SURVEY, ABSTRACT NO. 667, AND ALSO BEING LOTS 2 AND 3, BLOCK 2, SHERMAN CROSSROADS, PHASE II; ELAINE BRAUM, OWNER; BILLY DUCKWORTH, REPRESENTATIVE; SHERMAN CROSSROADDS, LTD, DEVELOPER; AND A&2 SURVEYING, SURVEYOR (3120 SOUTH HIGHWAY 75)

APPROVE REPLAT SHERMAN CROSSROADS PHASE II (3120 S. HIGHWAY 75)

The City Council approved the Replat of Sherman Crossroads, Phase II, a 4.474 acre tract, located at 3120 South Highway 75. The property is in the BIP (Blalock Industrial Park). The owner would like to plat the property into three lots for commercial development.

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

REPLAT APPROVAL OF HABITAT SOUTH FIRST ADDITION, BEING 0.152 ACRES IN THE GEORGE B. PILANT SURVEY, ABSTRACT 963, AND BEING PART OF LOT 4, BLOCK 2, WD FITCH ADDITION; FRANK VENTURA, HABITAT FOR HUMANITY, OWNER; BACA STUDIOS, ARCHITECT; AND PRESTON TRAIL LAND SURVEYING, SURVEYOR (1015 SOUTH FIRST STREET)

APPROVE REPLAT HABITAT SOUTH FIRST ADDITION (1015 S. FIRST ST)

The City Council approved the Replat of Habitat South First Addition, a 0.152 acre tract, located at 1015 South First Street. The property is zoned R-1 (One-Family Residential) District. The owner would like to plat the property into one lot for residential development.

The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

APPROVE FINAL PLAT BEL-AIR VILLAGE WEST (300-1000 BLOCKS E. FM 1417)

FINAL PLAT APPROVAL OF BEL-AIR VILLAGE WEST, BEING 105.109 ACRES IN THE SHARROD DUNMAN SURVEY, ABSTRACT NO. 329; RONNY GUERRERO, OWNER AND MICHAEL CARLISLE, KIMLEY-HORN AND ASSOCIATES, SURVEYOR (300-1000 BLOCKS EAST FM 1417 (VIETNAM VETERANS PARKWAY))

The City Council approved the Final Plat of Bel-Air Village West, a 105.109 acre tract, located in the 300 to 1000 blocks of East FM 1417. The property is zoned PD (Planned Development), C-2 (General Commercial) District, R-1 (One Family Residential) District, O-1 (75 & 82) Overlay District, O-1.1 (FM highway 1417) Overlay District. The owner would like to plat the property into four lots for residential development.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA, SUBJECT TO STAFF REVIEW LETTER.

COUNCIL COMMENTS

CITY COUNCIL WORK

CITY COUNCIL WORK

Council Member Marroquin said a lot of work will be coming to the City, and good things will be happening to the City.

QUICK COUNCIL MEETING

QUICK COUNCIL MTG

Council Member Teamann said this 16-minute meeting may be setting a record.

HAPPY NEW YEAR

HAPPY NEW YEAR

Council Member Dobbs wished everyone a Happy New Year.

ANNOUNCEMENTS

ANNOUNCEMENTS

Mayor Plyler announced the following:

- **Friend's of the Library will host their annual Book Sale on January 14, 2023, at the East Street location.**
- **The annual Habitators fundraiser for Habitat for Humanity will be held on January 21, 2023, at 11:00 a.m. in the Municipal Ballroom.**
- **The Sherman Chamber of Commerce's Annual Awards Luncheon will be held January 27, 2023. Tickets are available through the Chamber.**
- **Recognized Clint Philpott, Assistant City Manager, as "team leader and head architect" for the "Smokin' Philpotts" racing team during the City's annual employee appreciation lunch Mr. Philpott's team won the 9th Annual Pinewood Derby Race. He was presented with a plaque commemorating the win.**

EXECUTIVE SESSION – IN ACCORDANCE WITH CHAPTER 551, GOVT. CODE, V.T.C.S., (OPEN MEETINGS LAW)

EXECUTIVE SESSION

THE CITY COUNCIL WILL NOW HOLD AN EXECUTIVE SESSION PURSUANT TO THE PROVISIONS OF THE OPEN MEETINGS LAW,

CHAPTER 551, GOVERNMENT CODE, VERNONS TEXAS CODES ANNOTATED, IN ACCORDANCE WITH THE AUTHORITY CONTAINED IN THE FOLLOWING SECTIONS.

TEX. GOV'T CODE § 551.071 --
SEEKING THE ADVICE OF ITS ATTORNEY ABOUT PENDING OR CONTEMPLATED LITIGATION, SETTLEMENT OFFERS OR ANY MATTER IN WHICH THE DUTY OF THE ATTORNEY TO THE CITY COUNCIL UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE TEXAS OPEN MEETINGS ACT

(A) Grayson County Jail Expansion

TEX. GOV'T CODE § 551.072 --
DELIBERATING THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.073 --
DELIBERATING A NEGOTIATED CONTRACT FOR A PROSPECTIVE GIFT OR DONATION TO THE CITY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.074 --
DELIBERATING THE APPOINTMENT, EMPLOYMENT, EVALUATION, REASSIGNMENT, DUTIES, DISCIPLINE OR DISMISSAL OF A PUBLIC OFFICER OR EMPLOYEE; OR TO HEAR A COMPLAINT OR CHARGE AGAINST AN OFFICER OR EMPLOYEE UNLESS THE OFFICER OR EMPLOYEE WHO IS THE SUBJECT OF THE DELIBERATION OR HEARING REQUESTS A PUBLIC HEARING

(A) Greater Texoma Utility Authority Board of Directors (1)

TEX. GOV'T CODE § 551.076 –
DELIBERATING THE DEPLOYMENT, OR SPECIFIC OCCASIONS FOR IMPLEMENTATION, OF SECURITY PERSONNEL OR DEVICES OR A SECURITY AUDIT

TEX. GOV'T CODE § 551.087 –
DISCUSSING OR DELIBERATING COMMERCIAL OR FINANCIAL INFORMATION THAT THE CITY HAS RECEIVED FROM A BUSINESS PROSPECT THAT THE CITY SEEKS TO HAVE LOCATE, STAY OR EXPAND IN OR NEAR THE CITY AND WITH WHICH THE CITY IS CONDUCTING ECONOMIC DEVELOPMENT NEGOTIATIONS; OR DELIBERATING THE OFFER OF A FINANCIAL OR OTHER INCENTIVE TO A BUSINESS PROSPECT

(A) Grayson County Jail Expansion

TEX. GOV'T CODE § 551.089 --
DELIBERATING SECURITY ASSESSMENTS OR DEPLOYMENTS RELATING TO INFORMATION RESOURCES TECHNOLOGY, NETWORK SECURITY INFORMATION, OR THE DEPLOYMENT OR

SPECIFIC OCCASIONS FOR IMPLEMENTATION OF SECURITY PERSONNEL, CRITICAL INFRASTRUCTURE OR SECURITY DEVICES

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 5:18 p.m.

On Motion duly made and carried, the Executive Session recessed at 6:19 p.m. and reconvened in Open Meeting.

OPEN MEETING — **OPEN MEETING**

Reconvene into Open Meeting and take action, if any, on items discussed in Executive Session.

GREATER TEXOMA UTILITY AUTHORITY BOARD OF DIRECTORS (1) — **GTUA BOARD OF DIRECTORS**

ACTION TAKEN.

Motion by Deputy Mayor Stevenson to reappoint Brad Morgan to the Greater Texoma Utility Authority Board of Directors for a term from December 31, 2022 to December 31, 2024. Second by Council Member Holland.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

ADJOURNMENT — **ADJOURNMENT**

On Motion duly made and carried, the meeting adjourned at 6:21 p.m.

_____
MAYOR

_____
CITY CLERK

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **C. 1.**

Meeting Date: 01/17/2023

Approved By: Robby Hefton, City Manager

Caption:

CONSENT AGENDA

Asterisked (*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately

Issue:

D. 7. **** RESOLUTION NO. 7019***

Authorizing Execution of an Encroachment Agreement with Hope on Houston for the Encroachment of an Existing Building within the Proposed Platted 10-foot Utility Easement along the South and West Property Lines of Hope on Houston Addition and a Proposed 20-Foot Wastewater Easement, Approved by City Council on January 3, 2022, to be Filed in the Plat Records, Grayson County, Texas, Locally Known as 901 E. Houston Street in the City of Sherman, Texas

D. 8. **** RESOLUTION NO. 7020***

Abandoning One (1) Sixteen Foot (16') Utility Easement Located in Lots 1-4, Block 3 of Replat of Bright Star Addition, Volume 3, Page 80, Plat Records, Grayson County, Texas, and Being More Particularly Described on the Exhibit "A" Attached Hereto and Made a Part Hereof for all Purposes, which Utility Easements is Established in Volume 3, Page 80 of the Plat Records of Grayson County, Texas

D. 9. **** RESOLUTION NO. 7021***

Authorizing the Purchase of 1,404 new 95 Gallon EG Carts that will be used by the Solid Waste Department.

D. 10. **** RESOLUTION NO. 7022***

Authorizing Execution of an Agreement for Fire Protection Services between Grayson County, Texas and the City of Sherman, Texas for the Period of October 1, 2022 through June 30, 2023

D. 11. **** RESOLUTION NO. 7023***

Authorizing Execution of an Agreement for Ambulance Services with Grayson County for the Period of October 1, 2022 through June 30, 2023

E. 1. **** REQUEST TO ADVERTISE***

Purchase Multiple Fleet Vehicles for Multiple City Departments

E. 2. **** REQUEST TO ADVERTISE***

Annual Supply of Water Chemicals

E. 3. **** REQUEST TO ADVERTISE***

Contracting with a Construction Manager-at-Risk (CMAR) for Renovations and Additions to Fire Station No. 1

F. 2. **** OTHER BUSINESS***

Consider the Request of Jan Fletcher to Temporarily Close Certain Streets for the Black History Month Freedom Parade on Saturday, February 11, 2023, at 10:00am

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 1.**

Meeting Date: 01/17/2023
Prepared By: Zachary Flores, Executive Director of Public Safety
Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7013
Authorizing Execution of a Standard Form of Agreement Between Owner (City of Sherman) and Architect (Hidell and Associates Architects, Inc.) for Professional Services Relating to the Renovation and Addition for Fire Station No. 1.

Issue:

To consider a contract for professional services with Hidell and Associates Architects, Inc. (Hidell) for professional services relating to the renovation and addition for Fire Station No. 1

Background:

The Sherman Fire Department received approval during the fiscal year 2022-23 Budget Workshop to move forward with renovations and additions to Fire Station No. 1. Hidell and Associates Architects, Inc. have been involved with the project and are familiar with the City of Sherman's Public Safety Departments. Hidell has worked with the City in recent library renovations and the New Police Department headquarters and has proven to provide exceptional work.

This project's scope would allow 12 firefighters to stay at the station, increasing the City's capacity to house firefighters. This project is also anticipated to extend the station's life for two to three decades.

Origination:

Billy Hartsfield, Interim Fire Chief
Zachary Flores, Executive Director of Public Safety

Financial Consideration:

The fee for Basic A/E Services will be $244,800.00. This includes the following:
- Conceptual Design
- Schematic Design
- Design and Development
- Construction Document Phase
- Bidding
- Construction Administration

The fee for Supplemental Services will be $58,200.00. These are required services for the final design of the Site and Facility. The Supplemental Services will be completed by sub-consultants thru the Architectural contract.

This will include the following:
- Civil Engineering
- Geotechnical Report
- Landscape Design
- Equipment and Furniture Selection

The total for Basic A/E Services and Supplemental Services is $302,200. These fees are within the budgeted amount, with funding available in the Capital Improvements Program fund.

Staff Recommendation:

Staff recommends approval of the contract with Hidell and Associates Architects, Inc. for professional services relating to the renovation and addition for Fire Station No. 1.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 7013
Standard Form of Agreement
General Conditions of the Contract for Construction
Exhibit A - Contract Proposal
Exhibit B- Work Activities
Aerial Location Map

RESOLUTION NO. 7013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A STANDARD FORM OF AGREEMENT BETWEEN OWNER (CITY OF SHERMAN) AND ARCHITECT (HIDELL AND ASSOCIATES ARCHITECTS, INC.) FOR PROFESSIONAL SERVICES RELATING TO THE RENOVATION AND ADDITION FOR FIRE STATION NO. 1; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Standard Form of Agreement Between Owner and Architect with Hidell and Associates, Inc. professional services relating to the renovation and addition for Fire Station No. 1, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 17th day of January 2023

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____ **BY:** _____
LINDA ASHBY, CITY CLERK **DAVID PLYLER, MAYOR**

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

AIA® Document B133™ – 2019

Standard Form of Agreement Between Owner and Architect, *Construction Manager as Constructor Edition*

B133-2019 v2 (03-31-2021)

AGREEMENT made as of the 5th day of January in the year Two Thousand Twenty-Three (2023).
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address, and other information)

City of Sherman
220 W. Mulberry Street
Sherman, TX 75090
Phone: 903-892-7206

and the Architect:
(Name, legal status, address, and other information)

Hidell and Associates Architects
3033 Kellway Dr. Suite 120
Carrollton, Texas 75006
Phone: 972-416-4666

for the following Project:
(Name, location, and detailed description)

ARBH File No. 6262.0021 City of Sherman/Renovation and Expansion of Sherman Fire Station No. 1

City of Sherman, Texas

The goal of the renovation and expansion is to reconfigure the fire house to accommodate 10 crew, and a Battalion Chief, utilizing the existing bay configuration for apparatus storage. The facility will be renovated to include all required support spaces to promote health transitions from equipment to living quarters. The exterior façade shall be as required to achieve a cohesive design. The facility will be a single-story structure with approximately 10,800 sf of area under roof.

The Construction Manager (if known):
(Name, legal status, address, and other information)

To be determined.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A201–2017™, General Conditions of the Contract for Construction; A133–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Architect agree as follows.

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11 COMPENSATION

12 SPECIAL TERMS AND CONDITIONS

13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Shall be developed as part of the basic scope of services.

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

Renovation and Addition of the existing single story facility.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

The Owner's overall budget for the Cost of the Work is Four Million Dollars (4,000,000.00), excluding the Architect's fee.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

1. Design Phase – Approx. 20 Weeks
2. Bidding / Permit – Approx. 6 Weeks

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3. Construction Phase – Approx. 50 Weeks

.2 Construction commencement date:

The date of commencement of construction shall be established with a Notice to Proceed by the Owner.

.3 Substantial Completion date or dates:

To be determined.

.4 Other milestone dates:

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

[X] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

[ ] AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

N/A

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234-2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

Zachary Flores
Executive Director of Public Safety
220 W. Mulberry Street
Sherman, TX 75090

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

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N/A

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Construction Manager:

To be selected by Owner.

.2 Land Surveyor:

To be determined.

.3 Geotechnical Engineer:

To be determined.

.4 Intentionally Deleted:

.5 Other consultants and contractors:
(List any other consultants and contractors retained by the Owner.)

Boundary and Topographic Survey
Construction Period Materials Testing
HVAC Test and Balance

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:
(List name, address, and other contact information.)

Aaron Babcock, Principal
Hidell and Associates Architects
3033 Kellway Dr. Suite 120
Carrollton, Texas 75006
Phone: 972-416-4666

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

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§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

To be determined.

.2 MEP Engineer:

To be determined.

.3 Landscape Architect:

To be determined.

.4 Civil Engineer:

To be determined.

§ 1.1.12.2 Consultants retained under Supplemental Services:

If required and with the Owner's prior written approval, other consultants deemed necessary and not included in the Basic Services will be proposed and provided by the Architect and submitted as a Reimbursable Expense.

§ 1.1.13 Other Initial Information on which the Agreement is based:

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation by written amendment hereto. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

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§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project, which representative shall be acceptable to Owner.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 Insurance. The Architect shall maintain the following insurance until termination of this Agreement.

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million Dollars ($ $1,000,000.00) for each occurrence and Two Million Dollars ($ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars ($ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than One Million Dollars ($ $1,000,000.00) each accident, Two Million Dollars ($ 2,000,000.00) each employee, and Two Million Dollars ($ 2,000,000.00) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and Two Million Dollars ($ 2,000,000.00) in the aggregate. If the Professional Liability is made on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment.

§ 2.6.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an

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additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services and other specialty consultants required to address the needs of the Project. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's written approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review of each phase (Schematic Design, Design Development, and Construction Documents), for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause which shall promptly be defined in detail and submitted in writing to Owner, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum

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Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.2 Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall include:

(1) A conceptual Site Plan, scaled accurately, to depict all features of the site, including but not necessarily limited to drives, parking, streets, alleys, easements, finish floor elevation and site contours, location of existing utilities as provided by Owner under Section 5.5 and the building locations indicating proposed sidewalks and other site appurtenances. The site plan shall bear a schedule indicating the acreage of the site, the area of the site proposed for concrete or asphalt paving, the total area of the building, and area of proposed covered walks and overhangs.

(2) Floor Plan or plans, drawn to scale, indicating the dimensions and net areas of each individual space, labeled as to use, and indicating door swings, window or glassed areas, wall thickness, conceptual casework/millwork and other design features, which require Owner approval. Spaces too small at the plan scale to be adequately examined shall be enlarged and illustrated as necessary. Floor plan sheet shall bear a schedule indicating the gross area of the building and the square footage allocated to instruction, administration, support, circulation, and ancillary preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

(3) Exterior Elevations, drawn to scale, proposing the design concept and indicating proposed materials and design features.

(4) A preliminary code search, indicating the anticipated code requirements governing building, fire, life safety, accessibility, and health, and a statement as to the Architect's and Architect's Consultants' approach to accommodate these requirements shall be included. At the Owner's direction, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. The Architect shall obtain approval of Schematic Design Documents from Owner before proceeding to Design Development Phase.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

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§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 The extent of presentation shall be such that all aspects of the design and features, locations of equipment, switching, lighting, door numbers/types, room numbers/finishes, ceiling types/finishes and any other issue which may be incorporated into the Construction Documents shall have been presented to and approved by the Owner.

A complete code review, addressing building, fire, safety, ADA/TAS, health, and any or all other code/ordinance requirements shall be included, indicating the Architect's and Architect's Consultants' interpretations as to the code requirements and the features incorporated into the design that satisfy the requirements.

Site plans shall depict the final locations of all site appurtenances, utility connections and routing, drives, walks, yard irrigation, and other features to illustrate to the Owner that essentially all decisions have been made and that decisions of significance will not be required during Construction Document Phase.

Specifications shall be in outline form, and shall describe the materials and methods intended for use within the project, as well as potential alternates, allowances, and other significant information to be included in the Architectural and Engineering technical specifications sections of a project manual.

(Paragraph deleted)

§ 3.4.3 The Architect shall review the Construction Manager's detailed estimate of the final Cost of the Work.

§ 3.4.4 The Architect shall submit the Design Development Documents to the Owner and request the Owner's approval.

§ 3.4.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents. Owner shall approve Design Development Documents prior to Architect proceeding with Construction Documents.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction

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Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents which shall comply with all laws, statutes, ordinances, codes, rules and regulations, including, but not limited to, fire building, health, ADA/TAS, and indoor air quality.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site not less than once per week while Work is in progress, and as often as necessary and appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine for the Owner's benefit and protection, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner in

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writing (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§3.6.2.1.1 The Architect shall provide services made necessary by major defects or deficiencies in the Work of the Construction Manager(s) or its agents, employees or subcontractors which through reasonable care the Architect should have discovered and promptly reported to the Owner but failed to do so. In addition, the Architect shall follow the usual and customary standards of the profession in performing all services under this Agreement. Any defective design drawings or Specifications furnished by the Architect shall be promptly corrected by the Architect at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liability or the Owner's rights.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations, the Architect shall endeavor to secure faithful performance by the Construction Manager, and shall not be liable for results of interpretations or decisions rendered without negligence and in good faith. The Owner shall have final authority on matters relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

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§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

.1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;

.2 issue Certificates of Substantial Completion;

.3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and

.4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1

(Paragraphs deleted)

Paragraph Intentionally Deleted.

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 Paragraph Intentionally Deleted.

§ 4.1.2.2 Paragraph Intentionally Deleted.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall, by mutual agreement of Owner and Architect, entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;

.2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;

.3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

.4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations, after the date of Owner's acceptance of the Construction Drawings, of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

.5 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

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.6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;

.7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;

.8 Intentionally deleted;

.9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or

.11 Intentionally deleted;

.12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;

.13 Intentionally deleted;

.14 Intentionally deleted; and

.15 Intentionally deleted.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

.1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;

.2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 Evaluating an extensive number of Claims submitted by the Owner's consultants, the Contractor or others in connection with the Work except where such extensive number of claims could have been rectified by more descriptive original Contract Documents or addenda thereto; or

.5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide
(Paragraphs deleted)
during Construction Phase Services all services necessary to complete and completely discharge its responsibilities under this Agreement.

§ 4.2.4 Paragraph intentionally deleted.

§ 4.2.5 Paragraph intentionally deleted.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner

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shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.11 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, but the Owner's failure or omission to do so shall not relieve the Architect of his responsibilities hereunder and the Owner shall have no duty of observations, inspection or investigation.

§ 5.13 The Owner shall include the Architect in communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

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§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and approved in writing by the Owner, and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work shall not include the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- **.1** give written approval of an increase in the budget for the Cost of the Work;
- **.2** authorize rebidding or renegotiating of the Project within a reasonable time, with no adjustment in the Architect's compensation;
- **.3** terminate in accordance with Section 9.5;
- **.4** in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- **.5** implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.4, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section

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6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract

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for Construction as amended by the Owner. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be conducted in accordance with the provisions of Section 154.023, Texas Civil Practices and Remedies Code. The request may be made concurrently with the filing of a suit for legal or equitable relief.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 8.3 of this Agreement

[X] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration – Intentionally Deleted

(Paragraphs deleted)

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner wrongfully fails to make payments to the Architect in accordance with this Agreement, and such failure continues for a period of 30 days after written demand from Architect to Owner, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services, upon submitting and receiving an approved proposal to resume services to the

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Owner. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted at the mutual consent of the parties to the Agreement.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect may be compensated for expenses incurred in the interruption and resumption of the Architect's services upon submitting and receiving an approved proposal to the Owner. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee (Additional expenses that are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated):

Zero.

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

The Owner's payment to Architect in accordance with Section 9.6 shall constitute payment for a licensing fee for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, as amended by the Owner. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the

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other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 The Architect shall not specify or approve for use in the Project any new materials containing asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If the Architect discovers that such substances as described herein have been used or do exist in the Project, the Architect shall promptly notify the Owner in writing. When asbestos containing materials, polychlorinated biphenyl (PCB) or other toxic or hazardous substances are suspected or found in the course of the Project, the Owner shall immediately provide the services of an appropriately qualified expert or consultant to determine the proper course of action. Unless otherwise provided in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations, but only at such times and dates as stipulated by the Owner's Designated Representative. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 In accordance with Texas Government Code, Chapter 2270, the undersigned avers that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum

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(Insert amount)

Compensation shall be a Stipulated Sum of Three Hundred Two Thousand Two Hundred Dollars ($302,200.00).

.2 Percentage Basis
(Insert percentage value)

N/A ( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

N/A

§ 11.2 Prior to the commencement of any Sustainability Services required pursuant to Section 4.1.3, Architect shall submit to the Owner a written proposal containing the scope and estimated costs related thereto for approval by the Owner.

§ 11.3 Prior to the commencement of any Additional Services that may arise during the course of the Project, including those under Section 4.2, Architect shall submit to the Owner a written proposal containing the scope and estimated costs related thereto for approval by the Owner.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect with no mark-up.
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Ten	percent (	10	%)
Design Development Phase	Twenty-five	percent (	25	%)
Construction Documents Phase	Forty-five	percent (	45	%)
Construction Phase	Ten	percent (	10	%)
Conceptual Design	Five	Percent (	5	%)
Procurement	Five	Percent (	5	%)
Total Basic Compensation	one hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those

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portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate ($0.00)
o Principal…….	$200.00/hr
o Project Architect……	$180.00/hr
o Architect…….	$100.00/hr
o CADD…… ……	$80.00/hr
o Administration……	$60.00/hr

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1 Transportation in connection with the Project, when such transportation is not a function of routine performance of duties of the Architect or Architect's Consultants in connection with the Project, and when such transportation extends beyond 50 miles from the project site; authorized out-of-town travel and substance, which shall be prior approved by the Owner's Designated Representative, and which reimbursements shall be governed by the same travel policies provided for Owner's employees according to current adopted Owner's policy. Prior to the event, the Architect shall request, and the Owner's designated Representative shall provide the provisions and restrictions applicable to out-of-town travel reimbursements. Electronic communication reimbursable expense shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project;

.2 Intentionally deleted;

.3 Permitting and other fees required by authorities having jurisdiction over the Project;

.4 Reproductions, specifically limited to progress prints prepared for presentation to Owner at each phase of progress, and final construction documents prepared for distribution at bidding phase, provided that the Architect has duly obtained at least three quotations from commercial printing firms and has chosen the best value for the Owner. Plots shall be limited to plotting of final documents, provided that the Architect has duly obtained at least three quotations from commercial firms offering plotting services, and has chosen the best value for the Owner. Standard form documents are reimbursable if bulk-purchase discounts and other privileges afforded the Architect are extended to the Owner. If licensed electronic document forms are provided in lieu of hard-copy standard forms and are furnished by the Architect, the Architect may charge as reimbursable up to fifty percent (50%) of the purchase price of the corresponding hard-copy documents, subject to restrictions and limitations of copyright provisions governing both documents. Postage and delivery of Instruments of Service are reimbursable provided the Architect duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the Owner, which may require comparison of delivery costs offered by three or more sources or methods of delivery, which at minimum shall include US Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Architect. Handling is not reimbursable;

.5 Intentionally deleted;

.6 Expense of overtime work requiring higher than regular rates, if authorized in writing in advance by the Owner;

.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested in writing by the Owner or required for the Project;

.8 Intentionally deleted;

.9 Intentionally deleted;

.10 Site office expenses;

.11 Intentionally deleted; and

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.12 Other similar Project-related expenditures, which are duly presented in advance and approved by the Owner's Designated Representative in writing. Telephone service charges, including office or cellular phones, WATTS or Metro line services or similar charges are not reimbursable. Toll road subscriptions or toll plaza receipts are not reimbursable. Meals or any other related expenses are not reimbursable unless incurred outside a 50-mile radius of the Project, and then only reimbursable subject to compliance with Owner Policy. Faxed transmissions not requiring long distance toll charges are not reimbursable.

The Architect shall be solely responsible for the auditing of all Reimbursable Expenses, including the Architect's prior to submitting to Owner for reimbursement, and shall be responsible for the accuracy thereof. Any overpayment by the Owner for errors in submittals for reimbursement may be deducted from the Architect's subsequent payment for services.

Reimbursable Expenses shall not exceed Three Thousand Five Hundred Dollars ($3,500.00); unless the Scope of Work is modified.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants without any additional mark-up.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

§ 11.10 Payments to the Architect
§ 11.10.1 Initial Payments
§ 11.10.1.1 An initial payment of Zero Dollars and Zero Cents ($ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of N/A ($) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments
§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

The rate of interest computed in accordance with the provisions of the Texas Government Code, Section 2251.025.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect. Owner may withhold amounts from Architect's compensation to offset sums requested by or paid to contractors for the cost of changes in the Work caused by Architect's errors, omission or negligence.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

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§ 12.1 The Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337 or 505 E. Huntland Drive, Suite 350, Austin, Texas 78752, Phone: 512-305-9000, has jurisdiction over individuals licensed under the Architects Registration Law, Article 249A, VTCS

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 This AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition

.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below, if completed, or the following:
(Insert the date of the E203-2013 incorporated into this agreement.)

.3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[**N/A**] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.
(Insert the date of the E234-2019 incorporated into this agreement.)

[**X**] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A – Contract Proposal for Renovation / Addition of Fire Station No. 1. To the extent that any terms contained in Exhibit A conflict with the terms of this B133 or the A201 described below, this B133 or the A201 described below, as applicable, will control.

.4 Other documents:
(List other documents, if any, forming part of the Agreement.)

A201-2017 v:4 (06-11-2020) General Conditions of the Contract for Construction, as modified by Owner, attached hereto and incorporated herein for all purposes.

This Agreement entered into as of the day and year first written above.

CITY OF SHERMAN	HIDELL AND ASSOCIATES ARCHITECTS
By:	By:
OWNER *(Signature)*	**ARCHITECT** *(Signature)*
	William Hidell, President
(Printed name and title)	*(Printed name, title, and license number, if required)*

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Additions and Deletions Report for

AIA® Document B133™ – 2019

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PAGE 1

B133-2019 v2 (03-31-2021)

AGREEMENT made as of the 5th day of January in the year Two Thousand Twenty-Three (2023).

...

City of Sherman
220 W. Mulberry Street
Sherman, TX 75090
Phone: 903-892-7206

...

Hidell and Associates Architects
3033 Kellway Dr. Suite 120
Carrollton, Texas 75006
Phone: 972-416-4666

...

ARBH File No. 6262.0021 City of Sherman/Renovation and Expansion of Sherman Fire Station No. 1

...

City of Sherman, Texas

The goal of the renovation and expansion is to reconfigure the fire house to accommodate 10 crew, and a Battalion Chief, utilizing the existing bay configuration for apparatus storage. The facility will be renovated to include all required support spaces to promote health transitions from equipment to living quarters. The exterior façade shall be as required to achieve a cohesive design. The facility will be a single-story structure with approximately 10,800 sf of area under roof.

The Construction Manager (if known):

...

To be determined.

PAGE 2

Shall be developed as part of the basic scope of services.

...

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Renovation and Addition of the existing single story facility.

...

The Owner's overall budget for the Cost of the Work is Four Million Dollars (4,000,000.00), excluding the Architect's fee.

...

1. Design Phase – Approx. 20 Weeks
2. Bidding / Permit – Approx. 6 Weeks
3. Construction Phase – Approx. 50 Weeks

PAGE 3

The date of commencement of construction shall be established with a Notice to Proceed by the Owner.

...

To be determined.

...

[X] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

...

N/A

...

N/A

...

Zachary Flores
Executive Director of Public Safety
220 W. Mulberry Street
Sherman, TX 75090

PAGE 4

N/A

...

~~*(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)*~~

To be selected by Owner.

...

To be determined.

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...

To be determined.

...

.4 ~~Civil Engineer:~~Intentionally Deleted:

...

(List any other consultants and contractors retained by the Owner.)

Boundary and Topographic Survey
Construction Period Materials Testing
HVAC Test and Balance

...

Aaron Babcock, Principal
Hidell and Associates Architects
3033 Kellway Dr. Suite 120
Carrollton, Texas 75006
Phone: 972-416-4666
PAGE 5

To be determined.

...

.2 ~~Mechanical~~ MEP Engineer:

To be determined.

...

.3 ~~Electrical Engineer:~~Landscape Architect:

To be determined.

.4 Civil Engineer:
To be determined.

...

If required and with the Owner's prior written approval, other consultants deemed necessary and not included in the Basic Services will be proposed and provided by the Architect and submitted as a Reimbursable Expense.

...

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's ~~compensation.~~ compensation by written

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amendment hereto. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.
PAGE 6

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the ~~Project.~~Project, which representative shall be acceptable to Owner.

...

§ 2.6 Insurance. The Architect shall maintain the following insurance until termination of this Agreement. ~~If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.~~

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million Dollars ($ $1,000,000.00) for each occurrence and Two Million Dollars ($ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars ($ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 2.6.5 Employers' Liability with policy limits not less than One Million Dollars ($ $1,000,000.00) each accident, Two Million Dollars ($ 2,000,000.00) each employee, and Two Million Dollars ($ 2,000,000.00) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and Two Million Dollars ($ 2,000,000.00) in the aggregate. If the Professional Liability is made on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment.
PAGE 7

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering ~~services.~~ services and other specialty consultants required to address the needs of the Project. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely ~~on, and shall not be responsible for, the accuracy, completeness, and timeliness of,~~ on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's written approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's ~~review,~~ review of each phase (Schematic Design, Design Development, and Construction Documents), for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable ~~cause,~~ cause which shall promptly be defined in detail and submitted in writing to Owner, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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...

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. ~~The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals.~~ In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

PAGE 8

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall ~~consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations.~~ include:

(1) A conceptual Site Plan, scaled accurately, to depict all features of the site, including but not necessarily limited to drives, parking, streets, alleys, easements, finish floor elevation and site contours, location of existing utilities as provided by Owner under Section 5.5 and the building locations indicating proposed sidewalks and other site appurtenances. The site plan shall bear a schedule indicating the acreage of the site, the area of the site proposed for concrete or asphalt paving, the total area of the building, and area of proposed covered walks and overhangs.

(2) Floor Plan or plans, drawn to scale, indicating the dimensions and net areas of each individual space, labeled as to use, and indicating door swings, window or glassed areas, wall thickness, conceptual casework/millwork and other design features, which require Owner approval. Spaces too small at the plan scale to be adequately examined shall be enlarged and illustrated as necessary. Floor plan sheet shall bear a schedule indicating the gross area of the building and the square footage allocated to instruction, administration, support, circulation, and ancillary preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

(3) Exterior Elevations, drawn to scale, proposing the design concept and indicating proposed materials and design features.

(4) A preliminary code search, indicating the anticipated code requirements governing building, fire, life safety, accessibility, and health, and a statement as to the Architect's and Architect's Consultants' approach to accommodate these requirements shall be included. At the Owner's direction, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. The Architect shall obtain approval of Schematic Design Documents from Owner before proceeding to Design Development Phase.

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§ 3.4.2 ~~Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.~~ The extent of presentation shall be such that all aspects of the design and features, locations of equipment, switching, lighting, door numbers/types, room numbers/finishes, ceiling types/finishes and any other issue which may be incorporated into the Construction Documents shall have been presented to and approved by the Owner.

A complete code review, addressing building, fire, safety, ADA/TAS, health, and any or all other code/ordinance requirements shall be included, indicating the Architect's and Architect's Consultants' interpretations as to the code requirements and the features incorporated into the design that satisfy the requirements.

Site plans shall depict the final locations of all site appurtenances, utility connections and routing, drives, walks, yard irrigation, and other features to illustrate to the Owner that essentially all decisions have been made and that decisions of significance will not be required during Construction Document Phase.

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Specifications shall be in outline form, and shall describe the materials and methods intended for use within the project, as well as potential alternates, allowances, and other significant information to be included in the Architectural and Engineering technical specifications sections of a project manual.

~~**§ 3.4.3** Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.~~

§ 3.4.3 The Architect shall review the Construction Manager's detailed estimate of the final Cost of the Work.

§ 3.4.4 The Architect shall submit the Design Development Documents to the Owner and request the Owner's approval.

§ 3.4.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents. Owner shall approve Design Development Documents prior to Architect proceeding with Construction Documents.

PAGE 10

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction ~~Documents.~~Documents which shall comply with all laws, statutes, ordinances, codes, rules and regulations, including, but not limited to, fire building, health, ADA/TAS, and indoor air quality.

...

§ 3.6.2.1 The Architect shall visit the site ~~at intervals~~ not less than once per week while Work is in progress, and as often as necessary and appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to ~~determine,~~ determine for the Owner's benefit and protection, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner ~~reasonably~~ informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner in writing (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§3.6.2.1.1 The Architect shall provide services made necessary by major defects or deficiencies in the Work of the Construction Manager(s) or its agents, employees or subcontractors which through reasonable care the Architect should have discovered and promptly reported to the Owner but failed to do so. In addition, the Architect shall follow the usual and customary standards of the profession in performing all services under this Agreement. Any defective design drawings or Specifications furnished by the Architect shall be promptly corrected by the Architect at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liability or the Owner's rights.

PAGE 11

§ 3.6.2.3 The Architect shall interpret ~~and decide~~ matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations ~~and decisions~~ of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such ~~interpretations and decisions,~~ interpretations, the Architect shall endeavor to secure faithful performance by ~~both Owner and Construction Manager, shall not show partiality to either,~~ the Construction Manager, and shall not be liable for results of interpretations or decisions rendered ~~in good faith. The Architect's decisions on matters relating to aesthetic effect~~

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~~shall be final if~~ without negligence and in good faith. The Owner shall have final authority on matters relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents.

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§ 4.1.1 ~~The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.~~

~~*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*~~

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Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Assistance with Selection of Construction Manager	
§ 4.1.1.2 Programming	
§ 4.1.1.3 Multiple Preliminary Designs	
§ 4.1.1.4 Measured drawings	
§ 4.1.1.5 Existing facilities surveys	
§ 4.1.1.6 Site evaluation and planning	
§ 4.1.1.7 Building Information Model management responsibilities	
§ 4.1.1.8 Development of Building Information Models for post construction use	
§ 4.1.1.9 Civil engineering	
§ 4.1.1.10 Landscape design	
§ 4.1.1.11 Architectural interior design	
§ 4.1.1.12 Value analysis	
§ 4.1.1.13 Cost estimating	
§ 4.1.1.14 On-site project representation	
§ 4.1.1.15 Conformed documents for construction	
§ 4.1.1.16 As-designed record drawings	
§ 4.1.1.17 As-constructed record drawings	
§ 4.1.1.18 Post-occupancy evaluation	
§ 4.1.1.19 Facility support services	
§ 4.1.1.20 Tenant-related services	
§ 4.1.1.21 Architect's coordination of the Owner's consultants	
§ 4.1.1.22 Telecommunications/data design	
§ 4.1.1.23 Security evaluation and planning	
§ 4.1.1.24 Commissioning	
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.26 Historic preservation	
§ 4.1.1.27 Furniture, furnishings, and equipment design	
§ 4.1.1.28 Other services provided by specialty Consultants	
§ 4.1.1.29 Other Supplemental Services	

Paragraph Intentionally Deleted.

...

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.
(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)Paragraph Intentionally Deleted.

...

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

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~~(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)~~Paragraph Intentionally Deleted.

...

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 ~~shall~~ shall, by mutual agreement of Owner and Architect, entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

...

.1 Services necessitated by a change in the Initial Information, previous instructions or ~~recommendations given by the Construction Manager or the Owner,~~ approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;

...

.4 Changing or editing previously prepared Instruments of Service necessitated by official ~~interpretations~~ interpretations, after the date of Owner's acceptance of the Construction Drawings, of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

.5 Services necessitated by decisions of the Owner ~~or Construction Manager~~ not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

PAGE 14

.7 Preparation of design and documentation for alternate bid or proposal requests proposed by the ~~Owner or Construction Manager;~~Owner;

.8 ~~Preparation for, and attendance at, a public presentation, meeting or hearing;~~Intentionally deleted;

...

.11 ~~Assistance to the Initial Decision Maker, if other than the Architect;~~Intentionally deleted;

...

.13 ~~Services necessitated by the Owner's delay in engaging the Construction Manager;~~Intentionally deleted;

.14 ~~Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and~~Intentionally deleted; and

.15 ~~Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.~~Intentionally deleted.

...

.4 Evaluating an extensive number of Claims ~~as the Initial Decision Maker;~~ submitted by the Owner's consultants, the Contractor or others in connection with the Work except where such extensive number of claims could have been rectified by more descriptive original Contract Documents or addenda thereto; or

...

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§ 4.2.3 The Architect shall provide ~~Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:~~

~~**.1** ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager~~

~~**.2** ( ) visits to the site by the Architect during construction~~

~~**.3** ( ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~

~~**.4** ( ) inspections for any portion of the Work to determine final completion~~during Construction Phase Services all services necessary to complete and completely discharge its responsibilities under this Agreement.

§ 4.2.4 ~~Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.~~Paragraph intentionally deleted.

§ 4.2.5 ~~If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.~~Paragraph intentionally deleted.

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§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of ~~Service.~~Service, but the Owner's failure or omission to do so shall not relieve the Architect of his responsibilities hereunder and the Owner shall have no duty of observations, inspection or investigation.

§ 5.13 The Owner shall include the Architect in ~~all~~ communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

PAGE 16

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and approved in writing by the Owner, and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work ~~also includes~~ shall not include the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

...

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost ~~estimates, or due to market conditions the Architect could not reasonably anticipate.~~ estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

...

.2 authorize rebidding or renegotiating of the Project within a reasonable time, with no adjustment in the Architect's compensation;

.3 terminate in accordance with Section 9.5;

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~~.3~~ .4 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or

~~.4~~ .5 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section ~~6.5.3,~~ 6.5.4, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

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§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for ~~Construction.~~ Construction as amended by the Owner. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend.~~The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.~~

PAGE 18

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to ~~binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~litigation.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be ~~administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation.~~ conducted in accordance with the provisions of Section 154.023, Texas Civil Practices and Remedies Code. The request may be made concurrently with the filing of a ~~complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~suit for legal or equitable relief.

...

[X] Litigation in a court of competent jurisdiction

...

§ 8.3 Arbitration – Intentionally Deleted

~~**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

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~~**§ 8.3.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~**§ 8.3.2** The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 8.3.4 Consolidation or Joinder**~~
~~**§ 8.3.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~**§ 8.3.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~**§ 8.3.4.3** The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

...

§ 9.1 If the Owner wrongfully fails to make payments to the Architect in accordance with this Agreement, and such failure continues for a period of 30 days after written demand from Architect to Owner, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's ~~services.~~ services, upon submitting and receiving an approved proposal to resume services to the Owner. The Architect's fees for the remaining services and the time schedules shall be equitably ~~adjusted.~~adjusted at the mutual consent of the parties to the Agreement.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect ~~shall~~ may be compensated for expenses incurred in the interruption and resumption of the Architect's ~~services.~~ services upon submitting and receiving an approved proposal to the Owner. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.
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.1 Termination ~~Fee:~~Fee (Additional expenses that are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated):

Zero.

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...

The Owner's payment to Architect in accordance with Section 9.6 shall constitute payment for a licensing fee for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project.

...

§ 10.1 This Agreement shall be governed by the law of the place where the Project is ~~located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, ~~except as modified in this Agreement.~~ as amended by the Owner. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

PAGE 20

§ 10.6 ~~Unless otherwise required~~ The Architect shall not specify or approve for use in the Project any new materials containing asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If the Architect discovers that such substances as described herein have been used or do exist in the Project, the Architect shall promptly notify the Owner in writing. When asbestos containing materials, polychlorinated biphenyl (PCB) or other toxic or hazardous substances are suspected or found in the course of the Project, the Owner shall immediately provide the services of an appropriately qualified expert or consultant to determine the proper course of action. Unless otherwise provided in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such ~~representations.~~ representations, but only at such times and dates as stipulated by the Owner's Designated Representative. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

...

§ 10.10 In accordance with Texas Government Code, Chapter 2270, the undersigned avers that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

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Compensation shall be a Stipulated Sum of Three Hundred Two Thousand Two Hundred Dollars ($302,200.00).

...

N/A ( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

...

N/A

§ 11.2 ~~For the Architect's Supplemental Services designated in Section 4.1.1 and for~~ Prior to the commencement of any Sustainability Services required pursuant to Section 4.1.3, ~~the Owner shall compensate the Architect as follows:~~

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~~(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)~~Architect shall submit to the Owner a written proposal containing the scope and estimated costs related thereto for approval by the Owner.

...

§ 11.3 ~~For~~ Prior to the commencement of any Additional Services that may arise during the course of the Project, including those under Section 4.2, ~~the Owner shall compensate the Architect as follows:~~
~~(Insert amount of, or basis for, compensation.)~~Architect shall submit to the Owner a written proposal containing the scope and estimated costs related thereto for approval by the Owner.

...

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect ~~plus percent (%), or as follows:~~with no mark-up.

...

Schematic Design Phase	Ten	percent (	10	%)
Design Development Phase	Twenty-five	percent (	25	%)
Construction Documents Phase	Forty-five	percent (	45	%)
Construction Phase	Ten	percent (	10	%)
Conceptual Design	Five	Percent (	5	%)
Procurement	Five	Percent (	5	%)

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o Principal……	$200.00/hr
o Project Architect……	$180.00/hr
o Architect……	$100.00/hr
o CADD…… ……	$80.00/hr
o Administration……	$60.00/hr

...

.1 Transportation ~~and authorized out-of-town travel and subsistence;~~ in connection with the Project, when such transportation is not a function of routine performance of duties of the Architect or Architect's Consultants in connection with the Project, and when such transportation extends beyond 50 miles from the project site; authorized out-of-town travel and substance, which shall be prior approved by the Owner's Designated Representative, and which reimbursements shall be governed by the same travel policies provided for Owner's employees according to current adopted Owner's policy. Prior to the event, the Architect shall request, and the Owner's designated Representative shall provide the provisions and restrictions applicable to out-of-town travel reimbursements. Electronic communication reimbursable expense shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project;

.2 ~~Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;~~Intentionally deleted;

...

.4 ~~Printing, reproductions, plots, and standard form documents;~~Reproductions, specifically limited to progress prints prepared for presentation to Owner at each phase of progress, and final construction documents prepared for distribution at bidding phase, provided that the Architect has duly obtained at least three quotations from commercial printing firms and has chosen the best value for the Owner. Plots shall be limited to plotting of final documents, provided that the Architect has duly obtained at least three quotations from commercial firms offering plotting services, and has chosen the best value

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for the Owner. Standard form documents are reimbursable if bulk-purchase discounts and other privileges afforded the Architect are extended to the Owner. If licensed electronic document forms are provided in lieu of hard-copy standard forms and are furnished by the Architect, the Architect may charge as reimbursable up to fifty percent (50%) of the purchase price of the corresponding hard-copy documents, subject to restrictions and limitations of copyright provisions governing both documents. Postage and delivery of Instruments of Service are reimbursable provided the Architect duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the Owner, which may require comparison of delivery costs offered by three or more sources or methods of delivery, which at minimum shall include US Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Architect. Handling is not reimbursable;

.5 ~~Postage, handling, and delivery;~~Intentionally deleted;

.6 Expense of overtime work requiring higher than regular rates, if authorized in writing in advance by the Owner;

.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested in writing by the Owner or required for the Project;

.8 ~~If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;~~Intentionally deleted;

.9 ~~All taxes levied on professional services and on reimbursable expenses;~~Intentionally deleted;

...

.11 ~~Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and~~Intentionally deleted; and

.12 Other similar Project-related expenditures, which are duly presented in advance and approved by the Owner's Designated Representative in writing. Telephone service charges, including office or cellular phones, WATTS or Metro line services or similar charges are not reimbursable. Toll road subscriptions or toll plaza receipts are not reimbursable. Meals or any other related expenses are not reimbursable unless incurred outside a 50-mile radius of the Project, and then only reimbursable subject to compliance with Owner Policy. Faxed transmissions not requiring long distance toll charges are not reimbursable.

The Architect shall be solely responsible for the auditing of all Reimbursable Expenses, including the Architect's prior to submitting to Owner for reimbursement, and shall be responsible for the accuracy thereof. Any overpayment by the Owner for errors in submittals for reimbursement may be deducted from the Architect's subsequent payment for services.

~~**.12** Other similar Project-related expenditures.~~Reimbursable Expenses shall not exceed Three Thousand Five Hundred Dollars ($3,500.00); unless the Scope of Work is modified.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants ~~plus percent (%) of the expenses incurred.~~without any additional mark-up.

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§ 11.10.1.1 An initial payment of Zero Dollars and Zero Cents ($ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of N/A ($) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

...

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§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

~~%~~ The rate of interest computed in accordance with the provisions of the Texas Government Code, Section 2251.025.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the ~~Architect, or~~ Architect. Owner may withhold amounts from Architect's compensation to offset sums requested by or paid to contractors for the cost of changes in the ~~Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~ Work caused by Architect's errors, omission or negligence.

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§ 12.1 The Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337 or 505 E. Huntland Drive, Suite 350, Austin, Texas 78752, Phone: 512-305-9000, has jurisdiction over individuals licensed under the Architects Registration Law, Article 249A, VTCS

...

.1 This AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition

...

[**N/A**] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.

...

[**X**] Other Exhibits incorporated into this Agreement:

...

Exhibit A – Contract Proposal for Renovation / Addition of Fire Station No. 1. To the extent that any terms contained in Exhibit A conflict with the terms of this B133 or the A201 described below, this B133 or the A201 described below, as applicable, will control.

...

A201-2017 v:4 (06-11-2020) General Conditions of the Contract for Construction, as modified by Owner, attached hereto and incorporated herein for all purposes.

...

CITY OF SHERMAN

By:

HIDELL AND ASSOCIATES ARCHITECTS

By:

...

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William Hidell, President

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Christopher C. Zillmer/mls, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:46:18 CT on 01/13/2023 under Order No. 2114312451 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B133™ – 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

Christopher C. Zillmer/mls

(Signed)

(Title)

01/13/2023

(Dated)

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

A201-2017 v4 (06-11-2020)

for the following PROJECT:
(Name and location or address)

ARBH File No. 6262.0021 City of Sherman/Renovation and Expansion of Sherman Fire Station No. 1

City of Sherman, Texas
The goal of the renovation and expansion is to reconfigure the fire house to accommodate 10 crew, and a Battalion Chief, utilizing the existing bay configuration for apparatus storage. The facility will be renovated to include all required support spaces to promote health transitions from equipment to living quarters. The exterior façade shall be as required to achieve a cohesive design. The facility will be a single-story structure with approximately 10,800 sf of area under roof.

THE OWNER:
(Name, legal status and address)

City of Sherman
220 W. Mulberry Street
Sherman, TX 75090
Phone: 903-892-

THE ARCHITECT:
(Name, legal status and address)

Hidell and Associates Architects
3033 Kellway Dr. Suite 120
Carrollton, Texas 75006
Phone: 972-416-4666

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.1.1 The Contractor acknowledges and warrants that it has closely examined all the Contract Documents, that they are suitable and sufficient to enable the Contractor to complete the Work in a timely manner for the Contract Sum, and that they include all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. This Agreement was the result of negotiations between the Owner and Contractor, and has been reviewed by the Owner, Contractor and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, plant, supplies, skill, supervision, transportation, services and other facilities and things necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the contract documents. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their

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respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker
The Initial Decision Maker is the Owner.

§ 1.1.9 EQUAL TO (OR APPROVED EQUAL)
Products by manufacturers other than those specified in the Contract Documents which the Contractor may submit for substitution as equal to those specified in the Contract Documents and which may be incorporated in the Work after review and acceptance by the Architect of the information about such products and acceptance by the Owner.

§ 1.1.10 FORCE MAJEURE
An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Contractor's control, not caused by the negligent act or omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

§ 1.1.11 KNOWLEDGE
The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the work and in accordance with the highest standards in the contracting profession.

§ 1.2 Correlation and Intent of the Contract Documents
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§1.2.4 Specifications determine nature and setting, workmanship and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules give locations.

§1.2.5 Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect to satisfy exact and specific conditions. If discrepancies appear, Contractor shall request interpretation from the Architect prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.

§1.2.6 Should Drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by Architect in

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writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small scale drawings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization.

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Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 Intentionally deleted.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Intentionally deleted.

§ 2.2.3 Intentionally deleted.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner may furnish existing surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of the information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.4.1 The furnishing of such information by the Owner shall not relieve the Contractor from its duties under the Contract Documents, specifically as to inspection of the site and the Contract Documents. The Owner shall not be required to furnish the Contractor with any information as to subsurface conditions. If the Owner or the Architect has made any investigations of subsurface conditions, such investigations were made solely for the information of the Owner and Architect and not for the Contractor's information. No such information shall be construed to be a part of the Contract Documents. The Contractor acknowledges that, if Owner or Architect furnishes any such information to the Contractor, no waiver of the foregoing shall be implied, and the Contractor shall not be entitled to rely on such information but rather shall conduct its own investigation of such subsurface conditions. Further, no warranty of the accuracy of any such information shall be implied. The Contractor warrants that it is experienced in the type of Work undertaken pursuant to this contract and has the necessary expertise to form its own conclusions as to the necessity for conducting investigations of a type and nature as is calculated by Contractor to provide it with the necessary information so as to properly carry out the Work hereunder. . If the Contractor discovers conditions that vary significantly from those that it anticipated or that it would not have reasonable inferred from the

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examination of the site and available information, the Contractor may seek an equitable adjustment in the Contract Time or Contract Sum, or both.

§ 2.3.5 The information identified in Section 2.3,4, above, is not warranted or represented by the Owner to be accurate. The Contractor will not be entitled to rely on it and shall exercise proper precautions relating to the safe performance of the Work. If the Contractor does rely on such information, then Contractor does so at its own risk. When such information is provided by the Owner, the Contractor acknowledges that the Owner has not verified such information. Site plans prepared by Owner's design professionals or others are based on surveys performed by consultants, and have not been verified by the Owner. Site plans do not constitute any representation by the Owner to the Contractor of Site boundaries or other characteristics.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3, nor shall the exercise of the Owner's right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.6 ADDITIONAL RIGHTS

§ 2.6.1 The rights stated in Article 2 shall be in addition and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

§ 2.6.2 The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project with cause but without cost to the Owner. Such requests from the Owner may be made verbally or in writing and may be done directly or indirectly through the Architect/Engineer or on-site representative. Cause may be, but not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the facility or others, poor management, cause delay or delays, disruptive to the project, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

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§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has carefully examined the Contract Documents and the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the site, the specific conditions under which the Work is to be performed, and all matters that may in any way affect the Work or its performance. The Contractor further represents that as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents will not be permitted.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If a dimensional discrepancy exists, the Contractor shall take field measurements required for the proper fabrication and installation of the work. Upon commencement of any items of work, the Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make work properly fit at no additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 Contractor acknowledges that timely completion of the Work in accordance with the terms of said Documents is of crucial importance to Owner. Contractor shall provide the best skill and judgment of its officers and employees and shall cooperate with Owner and Architect to further the interests of Owner and to bring about timely completion of the Work. Contractor shall furnish sufficient business administration and superintendence and provide at all times an adequate supply of labor and materials to secure execution of the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of Owner. In the event of delays and/or unforeseen events, whether or not the same should entitle Contractor to an adjustment in the Contract Sum and/or Contract Time pursuant to Articles 7 and 8 hereof, Contractor shall use diligent efforts to maintain scheduled completion dates. Such efforts shall include rephasing events, decreasing overly conservative durations on subsequent events, increasing activity overlap, and using float on noncritical events. The float available in the Progress Schedule shall be used by Owner and Contractor whenever possible to offset the impact of

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delays. Contractor shall be responsible for coordinating its Work with the Work of any other contractors and/or activities at the job site.

§ 3.3.2 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.3 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.5 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of the Contractor are in addition to Contractor's obligations under other provisions hereunder.

§ 3.3.6 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect or by test, inspections, or approvals required or performed by persons other than Contractor.

§ 3.3.7 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including coordinating deliveries, storage, installations, and use of construction utilities. Contractor shall be responsible for the space requirements, location, and routing of its equipment. Contractor shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

§ 3.3.8 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the building(s) and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, the Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments, arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

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§ 3.3.9 Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said work and the Drawings and Specifications for the Work.

§ 3.3.10 Any discrepancy or omission in the dimensions or elevations shown on the Drawings and Specifications or found in previous work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the mis-description of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

§3.3.11 Contractor shall bear sole responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with State of Texas HB 662 and HB 665. On trench excavations in excess of five feet in depth, Contractor shall pay a qualified engineer to prepare detailed plans and specifications directing Contractor in the safe execution of trenching and shoring, unless other procedures are reviewed and accepted in writing by the applicable authorities prior to commencing trenching work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved or authorized by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

§3.4.4 Not later than 30 days from the contract date, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each major product identified in the specifications and the name of the installing subcontractor.

§3.4.5 After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products equal to those specified.

§3.4.6 By making requests for substitutions based on Subparagraph 3.4.5 above, the Contractor:

.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

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.3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§3.4.7 The Contractor shall not use any materials in the work that contain lead or asbestos materials in excess of amounts allowed by local/state standards, laws, codes, rules and regulations, Federal Environmental Protection Agency (EPA) standards and the Federal Occupational Safety and Health Administration (OSHA) standards, whichever are most restrictive.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that all workmanship shall be of the highest quality and in full conformance with the Contract Documents, and that all labor shall be performed by persons well qualified in their respective trades. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner.

§ 3.6 Taxes

The Contractor shall pay all sales, consumer, use and other similar taxes required by law. The Owner is an exempt organization as defined by the Limited Sales and Excise Use Tax Act of Texas. The Contractor may issue an exemption certification(s) in lieu of sales tax on the purchase, rental, or lease of all materials, supplies, equipment and other tangible personal property incorporated into the property being improved by virtue of this Contract, as well as all materials, supplies, equipment, and other tangible personal property used or consumed by the Contractor in performing this Contract with the Owner. The Contractor may issue exemption certificate(s) to its suppliers in lieu of said sales tax for all of said materials and supplies. The uses of said materials and supplies for which an exemption from the said sales tax is claimed and any such exemption certificate(s) shall comply with the applicable rulings of the State Comptroller.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 10 days

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after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 Prior to starting work, Contractor shall designate the Project Manager, Superintendent, and other key individuals who shall be assigned to the Project through and including Final Completion. The Superintendent shall be in attendance at the Project site throughout the Work, including completion of the punchlist. The Superintendent shall be approved by Owner in its sole discretion. Said representative shall be qualified in the type of Work to be undertaken and shall not be changed during the course of construction without the prior consent of Owner. Should a representative leave Contractor's employ, Contractor shall promptly designate a new representative. Owner shall have the right, at any time, to direct a change in Contractor's representative if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contractor may, at Owner's option, be terminated for cause. The Superintendent shall represent Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor. Owner shall have no obligation to direct or monitor Contractor's employees.

§ 3.9.2 Intentionally deleted.

§ 3.9.3 Intentionally deleted.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 Contractor, promptly after being awarded the Contract for Construction and before commencing Work, shall prepare and submit for Owner's and Architect's review and approval a preliminary schedule for the Work. Within

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ten (10) days following Owner's Notice to Proceed, Contractor shall provide to Owner and Architect a schedule of performance of the Work, showing timely completion of the Work and timely achievement of each Milestone Date as required by the Contract for Construction and meeting all other requirements of this Section 3.10 (the "Progress Schedule"). Upon receipt of Contractor's proposed Progress Schedule, Owner may accept the proposed Progress Schedule as submitted or reject it, noting deficiencies. If such schedule is requested, the deficiencies noted shall be corrected and a new proposed Progress Schedule shall be submitted within ten (10) days. In any case, a complete Progress Schedule must be approved by Owner prior to any payments' being made.

§ 3.10.2 The Progress Schedule shall be in the form of a network using critical path methodology (CPM), clearly showing construction activities, dependencies, and durations. The critical path activities shall be highlighted, float time for noncritical activities shall be shown, and the start and stop stated for each activity shall be listed. Longer-duration activities shall be broken into subactivities when the Work can be completed in phases (i.e., south half, north half, etc.). Contractor will be allowed flexibility in schedule, logic, and content; however, the Progress Schedule must be broken down by all trades, indicating ordering, delivery, and Milestone Dates, and the following activities must be included in all cases, if covered by the Scope of Work: (a) award of Contract; (b) site delivery and mobilization; (c) demolition; (d) pour foundations; (e) underground utilities; (f) pour slabs phase; (g) exterior walls phase; (h) columns; (i) floor and roof structure phase; (j) roof decking; (k) roofing (drying); (l) HVAC duct work; (m) fire sprinkler piping; (n) interior stud walls phase; (o) drywall; (p) lath and plaster phase; (q) painting phase; (r) ordering and delivery of long-lead materials; (s) completion of any parking structures; and (t) Milestone Dates. For all long-lead materials and for the purchase of any materials or equipment with a cost of $5,000 or more, the Progress Schedule shall include a Material Purchase Log, indicating the item of material or equipment, the quantity required, the estimated lead time, and, to the extent known, Contractor's purchase order number, the date ordered, the scheduled delivery date, and the actual or committed delivery date.

§ 3.10.3 The Contractor shall perform the Work in accordance with the Progress schedule as well as within the Milestone Dates and completion dates specified in the Contract for Construction. The times set forth in the Contract for Construction for all Milestone Dates and the time of completion must govern, and the Progress Schedule must be adjusted to meet these dates. Contractor shall maintain such Progress Schedule on a current basis in accordance with the provisions of this Section 3.10 and shall keep proper records to substantiate actual activity durations and completion dates.

§ 3.10.4 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, three copies of a Monthly Status Report in such form as Owner reasonably requests. Each Monthly Status Report shall concisely but completely describe, in narrative form, the then current status of the Work including, without limitation:

§ 3.10.4.1 A review of actual progress during the month in comparison to the Progress Schedule and, if actual progress is behind schedule, discussion of any "workaround" or "catch-up plan" that Contractor has employed or will employ to recover the original Progress Schedule;

§ 3.10.4.2 A concise statement of the outlook for meeting future Progress Schedule dates, and the reasons for any change in outlook from the previous report;

§ 3.10.4.3 A concise statement of significant progress on major items of Work during the report period, and progress photographs as necessary to document the current status of the Work;

§ 3.10.4.4 A review of any significant technical problems encountered during the months and the resolution or plan for resolution of such problems;

§ 3.10.4.5 An explanation of any corrective action taken or proposed;

§ 3.10.4.6 A complete review of the status of Change Orders, including a review of any changes in the critical path of the construction Progress Schedule which result from Change Orders approved by Owner during the month, as well as a review of the schedule impact of Change Order requests then pending;

§ 3.10.4.7 A summary of any Claims anticipated by Contractor with respect to the Work, including the anticipated cost and schedule impacts of any such Claims;

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§ 3.10.4.8 A cumulative summary of the number of days of, and the extent to which the progress of the Work was delayed by, any of the causes for which Contractor could be entitled to an extension of the Contract Time;

§ 3.10.4.9 A marked copy of the current Progress Schedule showing the status of each element of the Work; and

§ 3.10.4.10 An updated Material Purchase Log.

§ 3.10.5 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, for Owner's review and approval, three copies of an updated Progress Schedule meeting all the requirements of this Section 3.10, including:

§ 3.10.5.1 Actual versus estimated percent completion for each activity and Project total;

§ 3.10.5.2 Actual versus estimated work in place for each activity and Project total;

§ 3.10.5.3 Actual versus estimated manpower for each activity and Project total;

§ 3.10.5.4 Actual versus estimated cash flow; and

§ 3.10.5.5 Any change in the critical path.

§ 3.10.6 If the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, Owner may direct Contractor to accelerate its work, at Contractor's own cost, without any adjustment to the Contract Sum. Such acceleration may include employing such additional forces or paying such additional overtime wages as may be required to place the progress of the Work in conformity with the Progress Schedule and to assure timely substantial completion of the Work and achievement of all Milestone Dates.

§ 3.10.7 In addition, if the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, or Contractor fails to take prompt and adequate corrective action to Owner's satisfaction to bring the progress of the Work in compliance with the Progress Schedule, Owner may, in addition to any other right or remedy provided herein, proceed as provided in Sections 2.3, 2.4., or 2.5.

§ 3.10.8 Whenever significant changes to the Project occur, such as added or deleted activities, they must be reflected on a revised Progress Schedule to be submitted Owner for its review and approval.

§ 3.10.9 Contractor shall be responsible on a daily basis to maintain all information which affects the length of specific activities on the Progress Schedule, times when Contractor will perform specific jobs, and other data relevant to the Progress Schedule as required by the Architect or Owner. Contractor shall make available at any time such information for review by the Architect or Owner.

§ 3.10.10 Contractor shall prepare and keep current, for Architect's review, a schedule of submittals which is coordinated with Contractor's Progress Schedule, and allow the Architect reasonable time to review submittals.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain at the Project site, the Contract Documents, including the Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form and paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect. Should the Contractor Subcontractors or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely

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upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§3.13.2 The Contractor shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Document, Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Work in the event of partial occupancy. Contractor shall assume full responsibility for any damage to the property comprising the Work or to the owner or occupant of any adjacent land or areas resulting from the performance of the Work.

§3.13.3 Operating systems, utilities and services, serving the existing building and project site shall be maintained in operation to serve the needs of the building and site not involved in the Work under this Contract at all times during the progress of the Work under the Contract, except for such short periods as are absolutely necessary to perform the Work. Such operating systems, utilities and services include, but are not limited to, water, electric power, natural gas, heating, ventilating, air conditioning, sanitary sewer, fire alarm, telephone, security, cable television and communications cabling. Prior to interrupting or otherwise affecting any such operating system, utility or service, Contractor shall consult with Owner and Architect to establish a mutually satisfactory schedule for cut over, cut off, disruption or other change in operation of the affected system, utility or service. Owner may require that such cut over, cut off, disruption or change in operation be made to occur after normal working hours or on holidays or weekends. Such agreed upon times and dates shall be clearly indicated in a written memorandum among the parties; and once established and agreed to, schedules of disruption of systems, services and utilities shall be strictly adhered to, unless later changed in writing by mutual agreement of the parties.

§3.13.4 The Contractor shall not permit any workers to use any existing facilities at the site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by Owner. The Contractor, Subcontractors of any tier, suppliers and employees shall comply with instructions or regulations of the Owner governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the Contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of Owner's operations.

§3.13.5 The Contractor shall provide and maintain temporary "all-weather" emergency vehicle access roads as Fire Lanes, as required by the appropriate governmental entity having jurisdiction, until complete construction of all fire lanes. Fire lanes shall be maintained and remain accessible at all times.

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§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect, and their representatives, access to the Work in preparation and progress at all times and wherever located and shall provide proper and safe facilities for such access.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's officers and trustees, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused in whole or in part by andy act or omission, whether negligent or otherwise, of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages (subject to the mutual waiver of consequential damages in Section 15.1.6), compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.19 The Contractor shall maintain a set of Record Drawings on site in good condition and shall use colored pencils to mark-up said set with "record information" in a legible manner to show: (1) bidding addendums, (2)

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executed change orders, (3) deviations from the Drawings made during construction; (4) details in the Work not previously shown; (5) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (6) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (7) such other information as either Owner or Architect may reasonably request. The prints for Record Drawing use will be a set of "blue line" prints provided by Architect to Contractor at the start of construction. Upon Substantial Completion of the Work, Contractor shall deliver all Record Drawings to Owner and Architect for approval. If not approved, Contractor shall make the revisions requested by Architect or Owner. Final payment and any retainage shall not be due and owing to Contractor until the final Record Drawings marked by Contractor as required above are delivered to Owner.

§ 3.20 The Contractor shall submit four (4) volumes of operating instructions and service manuals to the Architect at the time of Substantial Completion, or as soon thereafter as practicable. Submission of all of the following shall be a condition precedent to Final Payment to the Contractor. The operating instructions and service manuals shall contain:

.1 Start-up and Shutdown Procedures: Provide a step-by-step write up of all major equipment. When manufacturer's printed start-up, trouble shooting and shut-down procedures are available, they may be incorporated into the operating manual for reference.

.2 Operating Instructions: Written operating instructions shall be included for the efficient and safe operation of all equipment.

.3 Equipment List: List of all major equipment as installed shall include model number, capacities, flow rate, and name-plate data.

.4 Service Instructions: The Contractor shall be required to provide the following information for all pieces of equipment.

(a) Recommended spare parts including catalog number and name of local suppliers or factory representative.

(b) Belt sizes, types, and lengths.

(c) Wiring diagrams.

.5 Manufacturer's Certificate of Warranty:
Manufacturer's Certificate of Warranty shall be obtained for all major equipment. Warranty shall be obtained for at least one year from the date of Substantial Completion. Where longer period is required by the Contract Documents, the longer period shall govern.

.6 Parts catalogs: For each piece of equipment furnished, a parts catalog or similar document shall be provided which identifies the components by number for replacement ordering.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when

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fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such Project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

§ 4.2.13 The Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents, and any such determination shall be communicated through the Architect.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

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§5.2.5 Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.

§5.2.6 The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall be relieved of any legal responsibility under the subcontract if the successor contractor assumes Owner's obligations under the subcontract.

§5.5 OWNER PAYMENTS TO SUBCONTRACTORS

§5.5.1 In the event of any default hereunder by the Contractor, or in the event the Owner or Architect fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount paid the Subcontractor shall be deducted from the payment to the Contractor.

§5.5.2 Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the

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Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for such proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- **.1** The change in the Work;
- **.2** The amount of the adjustment, if any, in the Contract Sum; and
- **.3** The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount as determined by Owner. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

(Paragraphs Deleted)

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 AGREED OVERHEAD AND PROFIT RATES

§ 7.5.1 For any adjustments to the Contract Sum based on other than the unit price method, overhead and profit combined shall be calculated at the following percentages of the cost attributable to the change in the Work:

.1 For the Contractor for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

.2 For the Contractor, for Work performed by the Contractor's Subcontractors, five percent (5%) of the amount due the Subcontractor;

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;

.5 Costs to which overhead and profit is to be applied shall be determined in accordance with Sub-subparagraphs 7.3.7.1 through 7.3.7.5;

.6 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any;

.7 To facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, material, and subcontracts. When major cost items are

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Subcontracts, they shall be itemized also.

8. For the Construction Manager when there are adjustments to the Contract sum that increase the GMP total, the Construction Manager's fee shall be at the percentage established in the contract and the combined total of the Construction Manager's fee plus the subcontractors overhead and profit should not exceed 15%.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. Claims for extension of time shall be stated in whole or half calendar days.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall be substantially complete with all work shown on or before the date specified for substantial completion in the Contract Documents. Extensions to the Completion Date will be granted only in accordance with Section 8.3.5 below.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by a wrongful act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by other causes that the Architect and Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Extensions of time shall be granted only because of delay preventing the execution of the major items of work critical to the schedule for completion of the Work.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay caused by either party under other provisions of the Contract Documents.

§ 8.3.4 In the event that the Owner has specified a stipulated completion date, the provisions of 8.3.1 through 8.3.3 do not apply. However, in the event of delay(s) fully beyond the Contractor's control, the Owner may authorize by change order reimbursement for additional costs to accelerate the construction in order to maintain the stipulated completion date.

§ 8.3.5 Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at http://gis.ncdc.noaa.gov/website/ims-cdo/sod/viewer.htm or other data as mutually agreed by the Architect and Contractor for the Project area or as set forth in an exhibit to the Guaranteed Maximum Price Amendment, if applicable. In allowing delays for weather, the Architect will be entitled to consider weather conditions prevailing throughout the entire Contract period. Extensions of time due to weather or other allowable reasons will be granted on the basis of one (1) calendar day credit for every working day lost, with each separate extension figured to the

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nearest whole calendar day. The extension of the contract completion time for weather conditions will occur only in the event that the weather in question affected critical activities on the most current Contractor's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions. Extensions of Contract Time shall be the sole remedy for delays due to weather conditions; compensation shall not be available.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner's obligation to pay the full Contract Sum.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Before any work is done on the site and before the first Application for Payment, the Contractor shall submit to the Architect a schedule or breakdown showing the respective amounts (called "values" for convenience) properly allocable to the various portions of the Work and aggregating the total contract sum. Each respective amount or value shall include its part of overhead and profit so that the sum of the items will total the contract sum. Such schedule of values will be prepared so as to facilitate payments by the Contractor to his Subcontractors and shall follow the trade divisions of the specifications so far as practicable. Such schedule and the amount therein shall be in such detail and supported by such data to substantiate its accuracy as the Architect may require. Such schedule, when approved by the Architect, unless it be found to be in error, shall be used only as a basis for the Contractor's Applications for Payment and shall not be taken as evidence of market or other value.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, submitted in quadruplicate.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§9.3.1.3 Until Substantial Completion, the Owner shall pay 95 percent of the amount due the Contractor on account of progress payments.

§9.3.1.4 Contractor is to submit to Architect within 15 days of execution of Owner/Contractor Agreement proposed sample of Lien Waiver and Bills Paid affidavit forms for review and acceptance for this Contract.

§9.3.1.5 Monthly Applications for Payment shall include waivers of liens for all work included in the previous months' application for payment. Waiver of Liens for the subcontractors and materialmen shall be the total amount paid prior to the previous months' application for payment.

§9.3.1.6 With each Application for Payment, Contractor shall certify that such Application for Payment represents a just estimate of cost reimbursable to the Contractor under the terms of the Contract Documents and shall also certify

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that there are not any Mechanics' or Materialmen's Liens outstanding at the date of this Application for Payment, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of that Application for Payment, and that there is no known basis for the filing of any Mechanics' or Materialmen's Liens against the Surety in connection with the Work, and that waivers and bills paid affidavit forms from all subcontractors and materialmen have been or will be obtained in such form as the Owner may require.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§9.4.3 Contractor shall include as a separate and distinct line item on his pay request a value for trenching and shoring operations. Contractor shall attach to pay request a notarized letter from shoring engineer that designed Contractor's trenching and shoring systems, addressed to Owner, attesting that engineer has (1) reviewed trenching and shoring systems installed in field and found them in conformance with shoring engineer's detailed plans and specifications, (2) line item on Contractor's pay request accurately represents work installed and/or materials on site, and (3) engineer recommends payment to Contractor of line item for trenching and shoring based on engineer's observations.

§9.4.4 Contractor's monthly Application for Payment that is submitted without required letter from Contractor's shoring engineer described by Subparagraph 9.4.3 is subject to return without review until letter is submitted.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot

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be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
.7 repeated failure to carry out the Work in accordance with the Contract Documents; or
.8 **failure to submit a written plan indicating action by Contractor to regain time schedule for completion of Work within the Contract Time**.

§ 9.5.2 Intentionally deleted.

§ 9.5.3 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of any Work.

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§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when construction is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy and utilize the Work as a whole for the use for which it is intended.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

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§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 In the event of partial use and occupancy by Owner, the Work, or any portion thereof, shall not be deemed substantially complete until the entire Work is substantially complete; and such partial use and occupancy shall not commence any warranty period under the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner **(1)** an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, **(2)** a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect, **(3)** a written statement satisfactory to the Owner that the insurance will cover the period required by the Contract Documents, **(4)** consent of surety, if any, to final payment, **(5)** documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and **(6)** if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner; **(7)** certification by the Contractor that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner or Architect are complete and accurate in all respects; and **(8)** evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including but not limited to (i) instruction of the Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Architect's review and delivery to the Owner; (iv) delivery to the Owner of printed or typewritten operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the Owner of the Record Drawings; (vi) delivery to the Owner of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material

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supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the Owner of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the Contractor. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner and Owner's lender (if any), the Contractor must furnish a bond satisfactory to the Owner and Owner's lender (if any) to indemnify the Owner and Owner's lender (if any) against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and attorneys' fees. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor must furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§9.10.2.1 In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver a permanent certificate of occupancy from local inspection authorities.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of any Claims by the Owner.
(Paragraphs Deleted)

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 **In addition to any other damages, failure of the Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Contractor's being responsible for excess Architect's fees. Excess Architect's fees include the cost incurred after sixty (60) days beyond the date of Substantial Completion. Excess Architect's fees will be deducted from the amount due the Contractor.**

A. The Contractor shall deliver to the Owner his written guarantee, made out to the Owner and in form satisfactory to the Owner, guaranteeing all of the work under the contract to be free from faulty materials in every particular, and free from improper workmanship, and against injury from proper and usual wear; and agreeing to replace or re-execute without cost to the Owner such work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials, due to such required replacement or re-execution. This guarantee shall be made to cover a period of twelve (12) months from the date of substantial completion as certified by the Architect under this Contract. This guarantee must be furnished to the Owner and approved by him before acceptance and final payment is made.

B. Contractor shall provide Owner with copies of all guarantees or warranties which have been made to the Contractor by suppliers or subcontractors as required hereunder, together with an assignment of such warranties and guarantees to the Owner; however, such assignment shall not relieve the Contractor of the responsibility stated in subparagraph (A) above in case of failure of subcontractors or supplies to fulfill the provision of such warranties or guarantees.

C. Neither the Final Certificate, nor payment, nor any provision in the Contract Documents shall relieve

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the Contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the guarantee.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§10.2.2.1 **If the Contractor fails to give such notices or fails to comply with such laws, ordinances, rules, regulations, and lawful orders, it shall be liable for and shall indemnify and hold harmless the Owner and the Architect and their respective employees, officers, and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder.**

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3 except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not

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insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§10.2.9 The Contractor shall protect and be responsible for any damage to his work or material, from the date of the agreement until the acceptance of the work and shall make good without cost to the Owner, any damage or loss that may occur during this period, except that in the event of partial or total occupancy by the Owner prior to final acceptance, the Owner shall be responsible for any damage caused by such partial or total occupancy. The Contractor shall handle all materials directed, so that it may be inspected by the Architect. All material affected by the weather shall be covered and protected to keep it free from damage while being transported to the site, as well as when it is stored on the site.

§10.2.10 The Contractor shall have full responsibility for preventing overstress of any structure or any part of member of it during construction. The Contractor shall fully check the effect of his operations in this regard, and shall provide all temporary support and connections required.

§10.2.11 The Contractor at his own expense and option shall employ watchmen or erect adequate fencing at such time as necessary to protect or attend his work, including times when building exterior is breached to protect it and its contents.

§ 10.2.12 The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept, or used in or about the Project site except to the extent such Hazardous Materials: (i) are necessary for the prosecution of the Work; (ii) are required pursuant to the Contract Documents; and (iii) have been approved in writing by Owner. Any Hazardous Materials allowed to be used on the Project site shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus Hazardous Materials, as well as any other Hazardous Materials that have been placed, released, or discharged on the Project site by the Contractor or any of its employees, agents, suppliers, or Subcontractors, shall be removed from the Project site at the earlier of: (i) the completion of the Work requiring the use of such Hazardous Materials; (ii) the completion of the Work as a whole; or use of such Hazardous Materials; (ii) the completion of the Work as a whole; or (iii) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. Any damage to the Work, the Project site, or any adjacent property resulting from the improper use of or any discharge or release of Hazardous Materials shall be remedied by the Contractor at its sole cost and expense and in compliance with all applicable laws. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project site. The Contractor shall provide the Owner with copies of all warning labels on products which the Contractor or any of its Subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" or similar laws. The Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the Project site in accordance with all applicable laws and regulations. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or received by the Contractor, or of which the Contractor otherwise becomes aware, which relate to any Hazardous Materials on the Project site. Without limiting any other indemnification provisions pursuant to law or specified in this Agreement, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by Owner), and hold the Owner and Architect harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing or remedying the effect of any Hazardous Materials on, under, from, or about the Project site, arising out of or relating to, directly or indirectly, the Contractor's failure to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and any substances, materials, or wastes that are or become regulated under federal, state, or local law.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or

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polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 Intentionally deleted.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 Intentionally deleted.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project:

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities excluded by statute from the requirements of Clause 11.1.1 but required by the Contract Documents to be covered by the insurance required by that Clause;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

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.4 Claims for damages insured by usual personal injury liability coverage;
.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
.7 Claims for bodily injury or property damage arising out of completed operations; and
.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.2.1 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be
maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

(Paragraph Deleted)

"Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

1. Premises Operations (including X, C and U coverage as applicable).
2. Independent Contractor's Protective
3. Products and Completed Operations.
4. Personal Injury Liability.
5. Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.
6. Owned, non-owned and hired motor vehicles."

§11.1.2.2 The insurance required by Subparagraph 11.1.1 shall be written by an insurance company having an A rating or better by A.M. Best and shall be written in limits for not less than the minimum required by law or the following:

1. Worker's Compensation:
(a) State: Statutory
(b) Applicable Federal: Statutory
(c) Employer's Liability: $500,000 per Accident
$500,000 Disease, Policy Limit
$500,000 Disease, Each Employee
2. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations):
(a) Each Occurrence: $1,000,000
Aggregate: $2,000,000
(b) Products and Completed Operations to be maintained for two years after final payment:
$2,000,000 Aggregate
(c) Coverage to be extended to include the interests of the Architect and his consultants.
(d) No total pollution exclusion should be included.
3. Business Auto $1,000,000 Combined Single Limit for Bodily Injury and Property Damage.
4. Umbrella Excess Liability:
(a) Over Primary Insurance: $1,000,000 Each Occurrence
5. Occurrence Policy: $1,000,000 Each Occurrence
(applicable for asbestos related projects only)

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If the General Liability coverage is provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.

§11.1.2.3 Each policy of insurance listed above shall be purchased and maintained by the Contractor and each certificate of insurance for said insurance shall contain a complete waiver of subrogation against Owner, Architect and Architect's Engineers. Each certificate shall also list Owner, the Contractor of the Owner, Architect and Architect's Engineers as a party insured.

§11.1.2.4 Contractor shall not commence work at the site under this Contract until he has obtained all required insurance and submitted appropriate certifications.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance
The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss
§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§ 11.6 PERFORMANCE BOND AND PAYMENT BOND
§ 11.6.1 The Contractor shall furnish a Performance Bond and a Payment Bond. The amount of each bond shall be equal to 100 percent of the Contract Sum. Any person or firm executing a bond upon the Contractor's Work under this Contract shall be deemed to have consented in advance to any changes in the Work made by order of Owner as set forth in Article 7; and any such changes made under these provisions shall in no way alter or impair the obligations of the person or firm executing such bond.

§11.6.1.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

§11.6.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney, indicating the monetary limit of such power.

§11.6.1.3 The Contractor shall provide each bond on the form required by Owner.

§11.6.1.4 No sureties will be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation pending against the Owner during the term of this Contract. All bonds shall be executed by a corporate surety authorized to do business in the State of Texas. The surety company or companies furnishing the surety bonds for this Contract must show a Texas Department of Insurance underwriting limitation not less than the total amount of the Contract. Each bond shall be executed by the Contractor and the Owner. Should any surety be determined unsatisfactory at any time by the Owner, notice will be given to the Contractor, and the Contractor shall immediately provide a new surety (complying with Article 11) acceptable to the Owner and at no additional cost to the Owner. This Contract shall not be valid nor will any payments be due or paid until approval of each bond by the Owner.

§ 11.6.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

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ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction, shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall be extended from the date corrective Work is performed by the Contractor.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§12.2.6 Owner shall have the right to operate equipment until defects are corrected and warranties met, and shall

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have the right to operate rejected equipment until it is replaced without charge for depreciation, use or wear.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

§13.1.2 The Owner has adopted a prevailing wage rate schedule as more fully described in the Project Manual or other Contract Documents. The Contractor and each Subcontractor shall pay to all laborers, workmen and mechanics employed by them in the execution of this Work not less than such rates for each craft or type of workman or mechanic needed to execute the Work. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than an hourly rate fairly comparable to the prevailing wage rates adopted by Owner. This determination of prevailing wages shall not be construed to prohibit the payment of more than the rates shown. In compliance with Texas Government Code, Chapter 2258, the Contractor and each subcontractor shall forfeit, as a penalty to the Owner, sixty dollars ($60.00) for each laborer, workman or mechanic employed by them, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the rates adopted by Owner.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 Rights and Remedies

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections, or approvals that do not become requirements until

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after bids are received or negotiations concluded and (2) tests, inspections, or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection, or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at twelve percent (12%) per annum.

§ 13.7 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§13.8 Equal Opportunity

§13.8.1 The Contractor shall maintain policies of employment as follows:

§13.8.1.1 The Contractor and Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

§13.8.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

§13.9 Criminal Background

§13.9.1 No person shall be engaged by the Contractor or any Sub-Contractor to work on Owner property where students are present who have charges pending, or who have been convicted, received probation or deferred adjudication for the following:

1. Any offense against a child;
2. Any sex offense;

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3. Any crimes against persons involving weapons or violence;
4. Any felony offense involving controlled substances;
5. Any felony offense against property; or
6. Any other offense that the Owner believes might compromise the safety of students, staff or property.

It shall be the responsibility of the Contractor and Sub-Contractor to ensure compliance with this provision.

§13.9.2 Any person associated with, engaged and/or representing on site or doing business with the Owner shall submit such background information as may be requested by the Owner in order to enable the Owner to perform criminal background evaluations/investigations for the following individuals:

1. General Contractor - Project Manager, Superintendent, Field Engineers and Foreman.
2. Subcontractors - Project Manager, Superintendent, Foreman.
3. Trades - Management personnel on site.

A copy of Criminal History Check form shall be available for review by the employer and affected party at the Owner's Administrative Office during normal business hours.

§13.10 Working Time and Working Restrictions

§13.10.1 THE ENTIRE BUILDING SHALL REMAIN TOBACCO-FREE AT ALL TIMES.

§13.10.2 Normal working hours and normal working days for Contractor's work on this Project shall be between 7:00 a.m. and 8:00 p.m., Monday through Friday, except as otherwise noted below. The Owner may require that certain limited portions of the Work be accomplished after normal working hours or other than on normal working days.

§13.10.3 Should Contractor desire to carry out portions of the Work at times other than between the hours and days stipulated above, he shall submit written request to do so to the Owner together with specific calendar days and hours he wishes to work and a description of the activities he proposes to carry out during those times. Construction activities will not be permitted at times other than those specified or subsequently approved in writing by the Owner. Only those activities specifically approved by Owner will be permitted during hours or on days other than those stipulated above.

§13.10.4 No extension of time will be granted and no "extra" or additional amount will be paid due to failure of Owner to approve performing of construction activities during hours other than those stipulated above.

§13.10.5 Work performed other than between 7:00 a.m. and 8:00 p.m., Monday through Friday, shall be done at no additional cost, whether work at other times is required by Owner or requested by Contractor and approved by Owner.

§13.10.6 If necessary in order to complete Work within time fixed in Contract or any extension thereof, Contractor shall request approval from Owner to perform work before 7:00 a.m. or after 8:00 p.m. or on weekends or holidays, and if Owner approves, shall perform work during such additional times and on such additional days as have been approved, at no additional cost to Owner. Work during such additional times and on such additional days shall continue only so long as is necessary to return work to on schedule or to complete the Work within the Contract Date.

§13.10.7 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

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.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

.3 Because the Owner has not made payment on a Certificate for Payment approved by the Architect within thirty (30) days after receipt of written notification from Contractor that the time for payment stated in the Contract Documents has expired.

§ 14.1.2 Intentionally deleted.

§ 14.1.3 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed, as well as reasonable overhead and profit on Work not executed.

§ 14.1.4 Intentionally deleted.

§14.1.5 Any payment due to, or recovered by, Contractor under paragraph 14.1.3 above shall not exceed the remainder, if any, after subtracting the total of the previous payments made by Owner to Contractor from the lesser of:

(a) the fair value (not Contractor's cost or profit) of the properly executed Work; or

(b) an amount determined by multiplying the contract price, as adjusted by change orders, times the percentage of Work completed.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or

.5 Contractor becomes insolvent or makes a general assignment for the benefit of its creditors.

§ 14.2.2 When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.4.1 The costs of finishing the Work include, without limitation, all direct costs incurred by the Owner by reason of the termination of the Contractor as stated herein, including without limitation, attorney and other professional fees, insurance premiums and interest costs.

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§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum may include profit. No adjustment shall be made to the extent

.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 10 days after occurrence of the event giving rise to such Claim or within 10 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party.

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§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum or for extra costs or damages, he shall give the Architect and the Owner written notice thereof within ten days after the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the portion of the Work that is the subject of the Claim except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with paragraph 10.4. Such claim, with the recommendation of the Architect, will be submitted to the Owner and its action shall be final and binding. Failure to give such notice shall be a waiver of the claim and such claim or possible claim shall be invalid and unenforceable unless so made. Compliance by the Contractor with this paragraph does not validate any claim which is otherwise invalid.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, the Contractor shall provide written notice as required by Sections 8.3.1 and 8.3.5.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented in accordance with Section 8.3.5.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision - Intentionally Deleted

(Paragraphs Deleted)

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

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§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which shall be in accordance with the provisions of Section 154.023, Texas Civil Practice and Remedies Code. A request for mediation shall be filed in writing with the other party to this Contract.

§ 15.3.3 Intentionally deleted.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration – Intentionally Deleted
(Paragraph Deleted)

§ARTICLE 16: ADDITIONAL PROVISIONS FOR LIQUIDATED DAMAGES
§16.1 Contractual Provisions
§16.1.1 **It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the Work to be done hereunder are essential conditions of this Contract.**

§16.1.2 **Contractor agrees that said work shall be prosecuted in accordance with the provisions of this Contract at such a rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and Owner, that the time for the completion of the Work described herein is a reasonable time for completion of the same.**

§16.1.3 If the said Contractor shall neglect, fail or refuse to complete the Work within the time indicated above or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to
the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract, as hereinafter set forth for **$500.00, for each and every calendar day** that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. Such damages shall be cumulative and not in lieu of any other rights or remedies of Owner against Contractor as a result of any breach by Contractor hereunder.

§16.1.4 **The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain.**

§16.1.5 It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever, and where under the Contract an additional time is allowed for the completion of any work, the new time fixed by such an extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess costs when the delay in completion of the Work is due:
.1 To any
performance, priority or allocated order duly issued by the Government;
.2 To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;
.3 To any delays of subcontractors or suppliers occasioned by any of the causes specified in subparagraphs of this Article.

§16.1.6 Provided, further, that the Contractor shall, within 10 days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner in writing of the cause of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

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...

ARBH File No. 6262.0021 City of Sherman/Renovation and Expansion of Sherman Fire Station No. 1

City of Sherman, Texas
The goal of the renovation and expansion is to reconfigure the fire house to accommodate 10 crew, and a Battalion Chief, utilizing the existing bay configuration for apparatus storage. The facility will be renovated to include all required support spaces to promote health transitions from equipment to living quarters. The exterior façade shall be as required to achieve a cohesive design. The facility will be a single-story structure with approximately 10,800 sf of area under roof.

...

City of Sherman
220 W. Mulberry Street
Sherman, TX 75090
Phone: 903-892- –

...

Hidell and Associates Architects
3033 Kellway Dr. Suite 120
Carrollton, Texas 75006
Phone: 972-416-4666 –

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ARTICLE 1 GENERAL PROVISIONS

...

§ **1.1.1.1** The Contractor acknowledges and warrants that it has closely examined all the Contract Documents, that they are suitable and sufficient to enable the Contractor to complete the Work in a timely manner for the Contract Sum, and that they include all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall

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not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. This Agreement was the result of negotiations between the Owner and Contractor, and has been reviewed by the Owner, Contractor and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party.

...

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, ~~and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.~~ plant, supplies, skill, supervision, transportation, services and other facilities and things necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the contract documents. The Work may constitute the whole or a part of the Project.

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The Initial Decision Maker is the ~~person identified~~ Owner.

...

§ 1.1.9 EQUAL TO (OR APPROVED EQUAL)

...

~~in the Agreement to render initial decisions~~ Products by manufacturers other than those specified in the Contract Documents which the Contractor may submit for substitution as equal to those specified in the Contract Documents and which may be incorporated in the Work after review and acceptance by the Architect of the information about such products and acceptance by the Owner.

...

§ 1.1.10 FORCE MAJEURE

...

~~on Claims~~ An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Contractor's control, not caused by the negligent act or omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

...

§ 1.1.11 KNOWLEDGE

...

~~in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know,

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recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the work and in accordance with the highest standards in the contracting profession.

...

§1.2.4 Specifications determine nature and setting, workmanship and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules give locations.

...

§1.2.5 Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect to satisfy exact and specific conditions. If discrepancies appear, Contractor shall request interpretation from the Architect prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.

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§1.2.6 Should Drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by Architect in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small scale drawings.

...

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved ~~rights in their Instruments of Service,~~ rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

...

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, ~~subject to any protocols established pursuant to Sections 1.7 and 1.8,~~ solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to ~~the~~ this Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

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§ 2.1.2 ~~The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~ Intentionally deleted.

...

§ 2.2.2 ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract~~

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~~Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~Intentionally deleted.

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§ 2.2.3 ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~Intentionally deleted.

...

§ 2.3.4 The Owner ~~shall furnish~~ may furnish existing surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of the information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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§ ~~2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other~~ **2.3.4.1** The furnishing of such information by the Owner shall not relieve the Contractor from its duties under the Contract Documents, specifically as to inspection of the site and the Contract Documents. The Owner shall not be required to furnish the Contractor with any information as to subsurface conditions. If the Owner or the Architect has made any investigations of subsurface conditions, such investigations were made solely for the information of the Owner and Architect and not for the Contractor's information. No such information shall be construed to be a part of the Contract Documents. The Contractor acknowledges that, if Owner or Architect furnishes any such information to the Contractor, no waiver of the foregoing shall be implied, and the Contractor shall not be entitled to rely on such information but rather shall conduct its own investigation of such subsurface conditions. Further, no warranty of the accuracy of any such information shall be implied. The Contractor warrants that it is experienced in the type of Work undertaken pursuant to this contract and has the necessary expertise to form its own conclusions as to the necessity for conducting investigations of a type and nature as is calculated by Contractor to provide it with the necessary information so as to properly carry out the Work hereunder. . If the Contractor discovers conditions that vary significantly from those that it anticipated or that it would not have reasonable inferred from the examination of the site and available information, the Contractor may seek an equitable adjustment in the Contract Time or Contract Sum, or both.

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~~information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.~~ **§ 2.3.5** The information identified in Section 2.3,4, above, is not warranted or represented by the Owner to be accurate. The Contractor will not be entitled to rely on it and shall exercise proper precautions relating to the safe performance of the Work. If the Contractor does rely on such information, then Contractor does so at its own risk. When such information is provided by the Owner, the Contractor acknowledges that the Owner has not verified such information. Site plans prepared by Owner's design professionals or others are based on surveys performed by consultants, and have not been verified by the Owner. Site plans do not constitute any representation by the Owner to the Contractor of Site boundaries or other characteristics.

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If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section ~~6.1.3.~~6.1.3, nor shall the exercise of the Owner's right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such ~~default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for~~ deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.~~If~~

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§ 2.6 ADDITIONAL RIGHTS

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§ 2.6.1 The rights stated in Article 2 shall be in addition and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

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~~the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~**§ 2.6.2** The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project with cause but without cost to the Owner. Such requests from the Owner may be made verbally or in writing and may be done directly or indirectly through the Architect/Engineer or on-site representative. Cause may be, but not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the facility or others, poor management, cause delay or delays, disruptive to the project, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

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§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has ~~visited the site, become generally familiar with local~~ carefully examined the Contract Documents and the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the site, the specific conditions under which the Work is to be performed, and ~~correlated personal observations with requirements of the Contract Documents.~~all matters that may in any way affect the Work or its performance. The Contractor further represents that as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents will not be permitted.

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§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If a dimensional discrepancy exists, the Contractor shall take field measurements required for the proper fabrication and installation of the work. Upon commencement of any items of work, the Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make work properly fit at no additional cost to the Owner.

...

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public ~~authorities.~~authorities unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents.

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§ 3.3.1 Contractor acknowledges that timely completion of the Work in accordance with the terms of said Documents is of crucial importance to Owner. Contractor shall provide the best skill and judgment of its officers and employees and shall cooperate with Owner and Architect to further the interests of Owner and to bring about timely completion of the Work. Contractor shall furnish sufficient business administration and superintendence and provide at all times an adequate supply of labor and materials to secure execution of the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of Owner. In the event of delays and/or unforeseen events, whether or not the same should entitle Contractor to an adjustment in the Contract Sum and/or Contract Time pursuant to Articles 7 and 8 hereof, Contractor shall use diligent efforts to maintain scheduled completion dates. Such efforts shall include rephasing events, decreasing overly conservative durations on subsequent events, increasing activity overlap, and using float on noncritical events. The float available in the Progress Schedule shall be used by Owner and Contractor whenever possible to offset the impact of delays. Contractor shall be responsible for coordinating its Work with the Work of any other contractors and/or activities at the job site.

...

§ 3.3.2 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect

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shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

...

§ ~~3.3.2~~ 3.3.3 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

...

§ ~~3.3.3~~ 3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

...

§ 3.3.5 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of the Contractor are in addition to Contractor's obligations under other provisions hereunder.

...

§ 3.3.6 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect or by test, inspections, or approvals required or performed by persons other than Contractor.

...

§ 3.3.7 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including coordinating deliveries, storage, installations, and use of construction utilities. Contractor shall be responsible for the space requirements, location, and routing of its equipment. Contractor shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

...

§ 3.3.8 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the building(s) and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, the Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments, arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or

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agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

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§ 3.3.9 Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said work and the Drawings and Specifications for the Work.

...

§ 3.3.10 Any discrepancy or omission in the dimensions or elevations shown on the Drawings and Specifications or found in previous work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the mis-description of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

...

§3.3.11 Contractor shall bear sole responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with State of Texas HB 662 and HB 665. On trench excavations in excess of five feet in depth, Contractor shall pay a qualified engineer to prepare detailed plans and specifications directing Contractor in the safe execution of trenching and shoring, unless other procedures are reviewed and accepted in writing by the applicable authorities prior to commencing trenching work.

...

§ 3.4.2 Except in the case of minor changes in the Work approved or authorized by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

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§3.4.4 Not later than 30 days from the contract date, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each major product identified in the specifications and the name of the installing subcontractor.

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§3.4.5 After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products equal to those specified.

...

§3.4.6 By making requests for substitutions based on Subparagraph 3.4.5 above, the Contractor:

...

.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

...

.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

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.3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

...

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

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§3.4.7 The Contractor shall not use any materials in the work that contain lead or asbestos materials in excess of

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amounts allowed by local/state standards, laws, codes, rules and regulations, Federal Environmental Protection

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Agency (EPA) standards and the Federal Occupational Safety and Health Administration (OSHA) standards,

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whichever are most restrictive.

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§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that all workmanship shall be of the highest quality and in full conformance with the Contract Documents, and that all labor shall be performed by persons well qualified in their respective trades. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

...

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the ~~Owner, and shall commence in accordance with Section 9.8.4.~~Owner.

...

The Contractor shall pay ~~sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~all sales, consumer, use and other similar taxes required by law. The Owner is an exempt organization as defined by the Limited Sales and Excise Use Tax Act of Texas. The Contractor may issue an exemption certification(s) in lieu of sales tax on the purchase, rental, or lease of all materials, supplies, equipment and other tangible personal property incorporated into the property being improved by virtue of this Contract, as well as all materials, supplies, equipment, and other tangible personal property used or consumed by the Contractor in performing this Contract with the Owner. The Contractor may issue exemption certificate(s) to its suppliers in lieu of said sales tax for all of said materials and supplies. The uses of said materials and supplies for which an exemption from the said sales tax is claimed and any such exemption certificate(s) shall comply with the applicable rulings of the State Comptroller.

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If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~14~~ 10 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and ~~Contractor,~~ Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may ~~submit a Claim~~ proceed as provided in Article 15.

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§ 3.9.1 ~~The Contractor shall employ a competent superintendent and necessary assistants who~~ Prior to starting work, Contractor shall designate the Project Manager, Superintendent, and other key individuals who shall be assigned to the Project through and including Final Completion. The Superintendent shall be in attendance at the Project site ~~during performance of the Work. The superintendent shall represent the~~ throughout the Work, including completion of the punchlist. The Superintendent shall be approved by Owner in its sole discretion. Said representative shall be qualified in the type of Work to be undertaken and shall not be changed during the course of construction without the prior consent of Owner. Should a representative leave Contractor's employ, Contractor shall promptly designate a new representative. Owner shall have the right, at any time, to direct a change in

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Contractor's representative if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contractor may, at Owner's option, be terminated for cause. The Superintendent shall represent Contractor, and communications given to the ~~superintendent~~ Superintendent shall be as binding as if given to the Contractor. Owner shall have no obligation to direct or monitor Contractor's employees.

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§ 3.9.2 ~~The~~ Intentionally deleted.

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§ 3.9.3 Intentionally deleted.

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§ 3.10 Contractor's Construction and Submittal Schedules

PAGE 20

~~Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days~~ **§ 3.10.1** Contractor, promptly after being awarded the Contract for Construction and before commencing Work, shall prepare and submit for Owner's and Architect's review and approval a preliminary schedule for the Work. Within ten (10) days following Owner's Notice to Proceed, Contractor shall provide to Owner and Architect a schedule of performance of the Work, showing timely completion of the Work and timely achievement of each Milestone Date as required by the Contract for Construction and meeting all other requirements of this Section 3.10 (the "Progress Schedule"). Upon receipt of Contractor's proposed Progress Schedule, Owner may accept the proposed Progress Schedule as submitted or reject it, noting deficiencies. If such schedule is requested, the deficiencies noted shall be corrected and a new proposed Progress Schedule shall be submitted within ten (10) days. In any case, a complete Progress Schedule must be approved by Owner prior to any payments' being made.

...

~~of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional~~ **§ 3.10.2** The Progress Schedule shall be in the form of a network using critical path methodology (CPM), clearly showing construction activities, dependencies, and durations. The critical path activities shall be highlighted, float time for noncritical activities shall be shown, and the start and stop stated for each activity shall be listed. Longer-duration activities shall be broken into subactivities when the Work can be completed in phases (i.e., south half, north half, etc.). Contractor will be allowed flexibility in schedule, logic, and content; however, the Progress Schedule must be broken down by all trades, indicating ordering, delivery, and Milestone Dates, and the following activities must be included in all cases, if covered by the Scope of Work: (a) award of Contract; (b) site delivery and mobilization; (c) demolition; (d) pour foundations; (e) underground utilities; (f) pour slabs phase; (g) exterior walls phase; (h) columns; (i) floor and roof structure phase; (j) roof decking; (k) roofing (drying); (l) HVAC duct work; (m) fire sprinkler piping; (n) interior stud walls phase; (o) drywall; (p) lath and plaster phase; (q) painting phase; (r) ordering and delivery of long-lead materials; (s) completion of any parking structures; and (t) Milestone Dates. For all long-lead materials and for the purchase of any materials or equipment with a cost of $5,000 or more, the Progress Schedule shall include a Material Purchase Log, indicating the item of material or equipment, the quantity required, the estimated lead time, and, to the extent known, Contractor's purchase order number, the date ordered, the scheduled delivery date, and the actual or committed delivery date.

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~~time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~**§ 3.10.3** The Contractor shall perform the Work in accordance with the Progress schedule as well as within the Milestone Dates and completion dates specified in the Contract for Construction. The times set forth in the Contract for Construction for all Milestone Dates and the time of completion must govern, and the Progress Schedule must be adjusted to meet these dates. Contractor shall maintain such Progress Schedule on a current basis in accordance with the provisions of this Section 3.10 and shall keep proper records to substantiate actual activity durations and completion dates.

...

§ ~~3.9.3 The Contractor shall not employ a proposed superintendent~~ **3.10.4** Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, three copies of a Monthly Status Report in such form as Owner reasonably requests. Each Monthly Status Report shall concisely but completely describe, in narrative form, the then current status of the Work including, without limitation:

...

~~to whom the Owner or Architect has made reasonable~~ **§ 3.10.4.1** A review of actual progress during the month in comparison to the Progress Schedule and, if actual progress is behind schedule, discussion of any "workaround" or "catch-up plan" that Contractor has employed or will employ to recover the original Progress Schedule;

...

~~and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~**§ 3.10.4.2** A concise statement of the outlook for meeting future Progress Schedule dates, and the reasons for any change in outlook from the previous report;

...

§ ~~3.10 Contractor's Construction and Submittal Schedules~~**3.10.4.3** A concise statement of significant progress on major items of Work during the report period, and progress photographs as necessary to document the current status of the Work;

...

§ ~~3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for~~ **3.10.4.4** A review of any significant technical problems encountered during the months and the resolution or plan for resolution of such problems;

...

§ 3.10.4.5 An explanation of any corrective action taken or proposed;

...

~~the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for~~ **§ 3.10.4.6** A complete review of the status of Change Orders, including a review of any changes in the critical path of the construction Progress Schedule which result from Change Orders approved by Owner during the month, as well as a review of the schedule impact of Change Order requests then pending;

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...

~~the Project, including (1) the date of commencement~~ **§ 3.10.4.7** A summary of any Claims anticipated by Contractor with respect to the Work, including the anticipated cost and schedule impacts of any such Claims;

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~~of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion~~ **§ 3.10.4.8** A cumulative summary of the number of days of, and the extent to which the progress of the Work was delayed by, any of the causes for which Contractor could be entitled to an extension of the Contract Time;

...

~~of the Work. The schedule shall provide for the orderly progression of the Work~~ **§ 3.10.4.9** A marked copy of the current Progress Schedule showing the status of each element of the Work; and

...

§ 3.10.4.10 An updated Material Purchase Log.

...

~~to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work~~ **§ 3.10.5** Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, for Owner's review and approval, three copies of an updated Progress Schedule meeting all the requirements of this Section 3.10, including:

...

~~and Project.~~ **§ 3.10.5.1** Actual versus estimated percent completion for each activity and Project total;

...

§ ~~3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule~~ **3.10.5.2** Actual versus estimated work in place for each activity and Project total;

...

§ 3.10.5.3 Actual versus estimated manpower for each activity and Project total;

...

§ 3.10.5.4 Actual versus estimated cash flow; and

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...

~~the Architect's approval. The Architect's approval shall not~~ § 3.10.5.5 Any change in the critical path.

...

~~be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow~~ § 3.10.6 If the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, Owner may direct Contractor to accelerate its work, at Contractor's own cost, without any adjustment to the Contract Sum. Such acceleration may include employing such additional forces or paying such additional overtime wages as may be required to place the progress of the Work in conformity with the Progress Schedule and to assure timely substantial completion of the Work and achievement of all Milestone Dates.

...

~~the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule,~~ § 3.10.7 In addition, if the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, or Contractor fails to take prompt and adequate corrective action to Owner's satisfaction to bring the progress of the Work in compliance with the Progress Schedule, Owner may, in addition to any other right or remedy provided herein, proceed as provided in Sections 2.3, 2.4., or 2.5.

...

§ 3.10.8 Whenever significant changes to the Project occur, such as added or deleted activities, they must be reflected on a revised Progress Schedule to be submitted Owner for its review and approval.

...

~~Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.~~ § 3.10.9 Contractor shall be responsible on a daily basis to maintain all information which affects the length of specific activities on the Progress Schedule, times when Contractor will perform specific jobs, and other data relevant to the Progress Schedule as required by the Architect or Owner. Contractor shall make available at any time such information for review by the Architect or Owner.

...

~~§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.~~ 3.10.10 Contractor shall prepare and keep current, for Architect's review, a schedule of submittals which is coordinated with Contractor's Progress Schedule, and allow the Architect reasonable time to review submittals.

...

The Contractor shall ~~make available,~~ maintain at the Project site, the Contract Documents, including the Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form ~~or~~ and paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect. Should the Contractor Subcontractors or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.

...

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

PAGE 23

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the ~~adequacy and accuracy~~ adequacy, accuracy and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor ~~the~~ all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

...

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

...

§3.13.2 The Contractor shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Document, Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Work in the event of partial occupancy. Contractor shall assume full responsibility for any damage to the property comprising the Work or to the owner or occupant of any adjacent land or areas resulting from the performance of the Work.

...

§3.13.3 Operating systems, utilities and services, serving the existing building and project site shall be maintained in operation to serve the needs of the building and site not involved in the Work under this Contract at all times during the progress of the Work under the Contract, except for such short periods as are absolutely necessary to perform the Work. Such operating systems, utilities and services include, but are not limited to, water, electric power, natural gas, heating, ventilating, air conditioning, sanitary sewer, fire alarm, telephone, security, cable television and

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communications cabling. Prior to interrupting or otherwise affecting any such operating system, utility or service, Contractor shall consult with Owner and Architect to establish a mutually satisfactory schedule for cut over, cut off, disruption or other change in operation of the affected system, utility or service. Owner may require that such cut over, cut off, disruption or change in operation be made to occur after normal working hours or on holidays or weekends. Such agreed upon times and dates shall be clearly indicated in a written memorandum among the parties; and once established and agreed to, schedules of disruption of systems, services and utilities shall be strictly adhered to, unless later changed in writing by mutual agreement of the parties.

...

§3.13.4 The Contractor shall not permit any workers to use any existing facilities at the site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by Owner. The Contractor, Subcontractors of any tier, suppliers and employees shall comply with instructions or regulations of the Owner governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the Contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of Owner's operations.

...

§3.13.5 The Contractor shall provide and maintain temporary "all-weather" emergency vehicle access roads as Fire Lanes, as required by the appropriate governmental entity having jurisdiction, until complete construction of all fire lanes. Fire lanes shall be maintained and remain accessible at all times.

PAGE 24

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the ~~Contract.~~ Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the ~~Project.~~Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.

...

The Contractor shall provide the Owner and ~~Architect with~~ Architect, and their representatives, access to the Work in preparation and progress ~~wherever located.~~at all times and wherever located and shall provide proper and safe facilities for such access.

...

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or ~~patent is discovered by, or made known to, the Contractor,~~ a patent, the Contractor shall be responsible for ~~the loss unless the~~ such loss unless such information is promptly furnished to the Architect.

...

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's consultants,~~ Owner's officers and trustees, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury,

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sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused ~~by the negligent acts or omissions~~ in whole or in part by andy act or omission, whether negligent or otherwise, of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that~~ which would otherwise exist as to a party or person described in this Section 3.18.

...

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of ~~damages,~~ damages (subject to the mutual waiver of consequential damages in Section 15.1.6), compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

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§ 3.19 The Contractor shall maintain a set of Record Drawings on site in good condition and shall use colored pencils to mark-up said set with "record information" in a legible manner to show: (1) bidding addendums, (2) executed change orders, (3) deviations from the Drawings made during construction; (4) details in the Work not previously shown; (5) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (6) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (7) such other information as either Owner or Architect may reasonably request. The prints for Record Drawing use will be a set of "blue line" prints provided by Architect to Contractor at the start of construction. Upon Substantial Completion of the Work, Contractor shall deliver all Record Drawings to Owner and Architect for approval. If not approved, Contractor shall make the revisions requested by Architect or Owner. Final payment and any retainage shall not be due and owing to Contractor until the final Record Drawings marked by Contractor as required above are delivered to Owner.

...

§ 3.20 The Contractor shall submit four (4) volumes of operating instructions and service manuals to the Architect at the time of Substantial Completion, or as soon thereafter as practicable. Submission of all of the following shall be a condition precedent to Final Payment to the Contractor. The operating instructions and service manuals shall contain:

...

.1 Start-up and Shutdown Procedures: Provide a step-by-step write up of all major equipment. When manufacturer's printed start-up, trouble shooting and shut-down procedures are available, they may be incorporated into the operating manual for reference.

...

.2 Operating Instructions: Written operating instructions shall be included for the efficient and safe operation of all equipment.

...

.3 Equipment List: List of all major equipment as installed shall include model number, capacities, flow rate, and name-plate data.

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...

.4 Service Instructions: The Contractor shall be required to provide the following information for all pieces of equipment.

...

(a) Recommended spare parts including catalog number and name of local suppliers or factory representative.

...

(b) Belt sizes, types, and lengths.

...

(c) Wiring diagrams.

...

.5 Manufacturer's Certificate of Warranty:

...

Manufacturer's Certificate of Warranty shall be obtained for all major equipment. Warranty shall be obtained for at least one year from the date of Substantial Completion. Where longer period is required by the Contract Documents, the longer period shall govern.

...

.6 Parts catalogs: For each piece of equipment furnished, a parts catalog or similar document shall be provided which identifies the components by number for replacement ordering.

...

§ **4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

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§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and ~~promptly~~ report to the Owner (1) known deviations from the Contract ~~Documents, (2) known deviations~~ Documents and from the most recent construction schedule submitted by the Contractor, and ~~(3)~~ (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections ~~13.4.2 and 13.4.3,~~ 13.5.2 and 13.5.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to

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exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

...

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions ~~or~~ or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

...

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may ~~order~~ authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

PAGE 27

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The ~~Owner shall notify the Contractor of any change in the~~ duties, responsibilities and limitations of authority of ~~the Project representatives.~~such Project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

...

§ 4.2.11 The Architect will interpret ~~and decide~~ matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

...

§ 4.2.12 Interpretations ~~and decisions~~ of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.~~When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.~~

...

§ 4.2.13 The ~~Architect's decisions on matters relating to aesthetic effect will be final if~~ Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract ~~Documents.~~Documents, and any such determination shall be communicated through the Architect.

...

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall ~~notify the Owner and Architect~~ furnish in writing to the Owner through the Architect the names of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials

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or equipment fabricated to a special design. ~~Within 14 days of receipt of the information, the Architect may notify the Contractor~~ The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect ~~(1)~~ has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the ~~Architect to provide notice~~ Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

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§5.2.5 Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.

...

§5.2.6 The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

...

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and ~~Contractor;~~ Contractor in writing; and

...

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall ~~nevertheless remain legally responsible for all of the successor contractor's~~ be relieved of any legal responsibility under the subcontract if the successor contractor assumes Owner's obligations under the subcontract.

...

§5.5 OWNER PAYMENTS TO SUBCONTRACTORS

...

§5.5.1 In the event of any default hereunder by the Contractor, or in the event the Owner or Architect fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount paid the Subcontractor shall be deducted from the payment to the Contractor.

...

§5.5.2 Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

PAGE 29

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly ~~notify~~ report to the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for such proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to

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proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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.4 As provided in Section ~~7.3.4.~~7.3.7.

...

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

...

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

...

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

...

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable ~~amount.~~ amount as determined by Owner. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section ~~7.3.4~~ 7.3.7 shall be limited to the following:

PAGE 31

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, ~~workers' compensation insurance, and other employee costs approved by the Architect;~~and workers' compensation insurance;

...

.5 ~~Costs~~ Additional costs of supervision and field office personnel directly attributable to the change.

...

~~**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.~~

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...

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...

~~§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.~~

...

§ 7.5 AGREED OVERHEAD AND PROFIT RATES

...

§ 7.5.1 For any adjustments to the Contract Sum based on other than the unit price method, overhead and profit combined shall be calculated at the following percentages of the cost attributable to the change in the Work:

...

.1 For the Contractor for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

...

.2 For the Contractor, for Work performed by the Contractor's Subcontractors, five percent (5%) of the amount due the Subcontractor;

...

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

...

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;

...

.5 Costs to which overhead and profit is to be applied shall be determined in accordance with Sub-subparagraphs 7.3.7.1 through 7.3.7.5;

...

.6 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any;

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.7 To facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, material, and subcontracts. When major cost items are Subcontracts, they shall be itemized also.

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...

8. For the Construction Manager when there are adjustments to the Contract sum that increase the GMP total, the Construction Manager's fee shall be at the percentage established in the contract and the combined total of the Construction Manager's fee plus the subcontractors overhead and profit should not exceed 15%.

...

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. Claims for extension of time shall be stated in whole or half calendar days.

...

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall be substantially complete with all work shown on or before the date specified for substantial completion in the Contract Documents. Extensions to the Completion Date will be granted only in accordance with Section 8.3.5 below.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by ~~(1) an~~ a wrongful act or neglect of the Owner or Architect, or of an employee of either, or of a ~~Separate Contractor; (2)~~ separate contractor employed by the Owner; or by changes ordered in the Work; ~~(3)~~ or by labor disputes, fire, unusual delay in deliveries, unavoidable ~~casualties, adverse weather conditions documented in accordance with Section 15.1.6.2,~~ casualties or other causes beyond the Contractor's control; ~~(4) by delay authorized by the Owner pending mediation and binding dispute resolution;~~ or ~~(5)~~ by other causes that the ~~Contractor asserts, and the Architect determines,~~ Architect and Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Extensions of time shall be granted only because of delay preventing the execution of the major items of work critical to the schedule for completion of the Work.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay caused by either party under other provisions of the Contract Documents.

...

§ 8.3.4 In the event that the Owner has specified a stipulated completion date, the provisions of 8.3.1 through 8.3.3 do not apply. However, in the event of delay(s) fully beyond the Contractor's control, the Owner may authorize by change order reimbursement for additional costs to accelerate the construction in order to maintain the stipulated completion date.

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§ 8.3.5 Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at http://gis.ncdc.noaa.gov/website/ims-cdo/sod/viewer.htm or other data as mutually agreed by the Architect and Contractor for the Project area or as set forth in an exhibit to the Guaranteed Maximum Price Amendment, if applicable. In allowing delays for weather, the Architect will be entitled to consider weather conditions prevailing throughout the entire Contract period. Extensions of time due to weather or other allowable reasons will be granted on the basis of one (1) calendar day credit for every working day lost, with each separate extension figured to the nearest whole calendar day. The extension of the contract completion time for weather conditions will occur only in

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the event that the weather in question affected critical activities on the most current Contractor's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions. Extensions of Contract Time shall be the sole remedy for delays due to weather conditions; compensation shall not be available.

...

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the ~~total~~ maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner's obligation to pay the full Contract Sum.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum~~ Before any work is done on the site and before the first Application for Payment, the Contractor shall submit to the Architect a schedule or breakdown showing the respective amounts (called "values" for convenience) properly allocable to the various portions of the ~~Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect~~ Work and aggregating the total contract sum. Each respective amount or value shall include its part of overhead and profit so that the sum of the items will total the contract sum. Such schedule of values will be prepared so as to facilitate payments by the Contractor to his Subcontractors and shall follow the trade divisions of the specifications so far as practicable. Such schedule and the amount therein shall be in such detail and supported by such data to substantiate its accuracy as the Architect may ~~require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~require. Such schedule, when approved by the Architect, unless it be found to be in error, shall be used only as a basis for the Contractor's Applications for Payment and shall not be taken as evidence of market or other value.

...

§ 9.3.1 At least ~~ten~~ fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. ~~The~~ Such application shall be notarized, if required, and supported by ~~all~~ such data substantiating the Contractor's right to payment ~~that~~ as the Owner or Architect may require, such as copies of ~~requisitions, and releases and waivers of liens from Subcontractors and~~ requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, submitted in quadruplicate.

...

§9.3.1.3 Until Substantial Completion, the Owner shall pay 95 percent of the amount due the Contractor on account of progress payments.

...

§9.3.1.4 Contractor is to submit to Architect within 15 days of execution of Owner/Contractor Agreement proposed sample of Lien Waiver and Bills Paid affidavit forms for review and acceptance for this Contract.

...

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§9.3.1.5 Monthly Applications for Payment shall include waivers of liens for all work included in the previous months' application for payment. Waiver of Liens for the subcontractors and materialmen shall be the total amount paid prior to the previous months' application for payment.

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§9.3.1.6 With each Application for Payment, Contractor shall certify that such Application for Payment represents a just estimate of cost reimbursable to the Contractor under the terms of the Contract Documents and shall also certify that there are not any Mechanics' or Materialmen's Liens outstanding at the date of this Application for Payment, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of that Application for Payment, and that there is no known basis for the filing of any Mechanics' or Materialmen's Liens against the Surety in connection with the Work, and that waivers and bills paid affidavit forms from all subcontractors and materialmen have been or will be obtained in such form as the Owner may require.

...

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner ~~shall, to the best of the Contractor's knowledge, information, and belief,~~ shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities ~~that~~ making a claim by reason of having provided labor, materials, and equipment relating to the Work.

...

§9.4.3 Contractor shall include as a separate and distinct line item on his pay request a value for trenching and shoring operations. Contractor shall attach to pay request a notarized letter from shoring engineer that designed Contractor's trenching and shoring systems, addressed to Owner, attesting that engineer has (1) reviewed trenching and shoring systems installed in field and found them in conformance with shoring engineer's detailed plans and specifications, (2) line item on Contractor's pay request accurately represents work installed and/or materials on site, and (3) engineer recommends payment to Contractor of line item for trenching and shoring based on engineer's observations.

...

§9.4.4 Contractor's monthly Application for Payment that is submitted without required letter from Contractor's shoring engineer described by Subparagraph 9.4.3 is subject to return without review until letter is submitted.

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.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;~~or~~

...

.7 repeated failure to carry out the Work in accordance with the Contract ~~Documents.~~Documents; or

...

.8 **failure to submit a written plan indicating action by Contractor to regain time schedule for completion of Work within the Contract**

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...

Time.

...

§ 9.5.2 ~~When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.~~Intentionally deleted.

...

§ 9.5.3 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

...

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors ~~and suppliers~~ to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a ~~Subcontractor or supplier,~~ Subcontractor, except as may otherwise be required by law.

...

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of ~~Work not in accordance with the Contract Documents.~~any Work.

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If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the ~~Architect or awarded by binding dispute resolution,~~ Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when ~~the Work or designated portion thereof~~ construction is sufficiently complete in accordance with the Contract Documents so that the Owner ~~can occupy or utilize the Work for its intended use.~~may occupy and utilize the Work as a whole for the use for which it is intended.

PAGE 37

§ 9.9.3 ~~Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of~~ In the event of partial use and occupancy by Owner, the Work, or any portion thereof, shall not be deemed substantially complete until the entire Work is substantially complete; and such partial use and occupancy shall not commence any warranty period under the Contract Documents.

...

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the

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Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

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§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner **(1)** an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, **(2)** a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect, **(3)** a written statement ~~that the Contractor knows of no reason that the insurance will not be renewable to~~ satisfactory to the Owner that the insurance will cover the period required by the Contract Documents, **(4)** consent of surety, if any, to final payment, **(5)** documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and **(6)** if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the ~~Owner.~~ Owner; **(7)** certification by the Contractor that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner or Architect are complete and accurate in all respects; and **(8)** evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including but not limited to (i) instruction of the Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Architect's review and delivery to the Owner; (iv) delivery to the Owner of printed or typewritten operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the Owner of the Record Drawings; (vi) delivery to the Owner of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the Owner of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the Contractor. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner and Owner's lender (if any), the Contractor must furnish a bond satisfactory to the Owner and Owner's lender (if any) to indemnify the Owner and Owner's lender (if any) against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and attorneys' fees. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor ~~may~~ must furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

...

§9.10.2.1 In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver a permanent certificate of occupancy from local inspection authorities.

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...

§ 9.10.4 The making of final payment shall not constitute a waiver of ~~Claims by the Owner except those arising from~~any Claims by the Owner.

...

~~.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~

...

~~.2 failure of the Work to comply with the requirements of the Contract Documents;~~

...

~~.3 terms of special warranties required by the Contract Documents; or~~

...

~~.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~

...

§ 9.10.6 **In addition to any other damages, failure of the Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Contractor's being responsible for excess Architect's fees. Excess Architect's fees include the cost incurred after sixty (60) days beyond the date of Substantial Completion. Excess Architect's fees will be deducted from the amount due the Contractor.**

...

A. The Contractor shall deliver to the Owner his written guarantee, made out to the Owner and in form satisfactory to the Owner, guaranteeing all of the work under the contract to be free from faulty materials in every particular, and free from improper workmanship, and against injury from proper and usual wear; and agreeing to replace or re-execute without cost to the Owner such work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials, due to such required replacement or re-execution. This guarantee shall be made to cover a period of twelve (12) months from the date of substantial completion as certified by the Architect under this Contract. This guarantee must be furnished to the Owner and approved by him before acceptance and final payment is made.

...

B. Contractor shall provide Owner with copies of all guarantees or warranties which have been made to the Contractor by suppliers or subcontractors as required hereunder, together with an assignment of such warranties and guarantees to the Owner; however, such assignment shall not relieve the Contractor of the responsibility stated in subparagraph (A) above in case of failure of subcontractors or supplies to fulfill the provision of such warranties or guarantees.

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C. Neither the Final Certificate, nor payment, nor any provision in the Contract Documents shall relieve the Contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the guarantee.

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...

§10.2.2.1 **If the Contractor fails to give such notices or fails to comply with such laws, ordinances, rules, regulations, and lawful orders, it shall be liable for and shall indemnify and hold harmless the Owner and the Architect and their respective employees, officers, and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder.**

...

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and ~~10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is~~ 10.2.1.3 except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, ~~notice of the~~ written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

...

§10.2.9 The Contractor shall protect and be responsible for any damage to his work or material, from the date of the agreement until the acceptance of the work and shall make good without cost to the Owner, any damage or loss that may occur during this period, except that in the event of partial or total occupancy by the Owner prior to final acceptance, the Owner shall be responsible for any damage caused by such partial or total occupancy. The Contractor shall handle all materials directed, so that it may be inspected by the Architect. All material affected by the weather shall be covered and protected to keep it free from damage while being transported to the site, as well as when it is stored on the site.

...

§10.2.10 The Contractor shall have full responsibility for preventing overstress of any structure or any part of member of it during construction. The Contractor shall fully check the effect of his operations in this regard, and shall provide all temporary support and connections required.

...

§10.2.11 The Contractor at his own expense and option shall employ watchmen or erect adequate fencing at such time as necessary to protect or attend his work, including times when building exterior is breached to protect it and its contents.

...

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§ 10.2.12 The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept, or used in or about the Project site except to the extent such Hazardous Materials: (i) are necessary for the prosecution of the Work; (ii) are required pursuant to the Contract Documents; and (iii) have been approved in writing by Owner. Any Hazardous Materials allowed to be used on the Project site shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus Hazardous Materials, as well as any other Hazardous Materials that have been placed, released, or discharged on the Project site by the Contractor or any of its employees, agents, suppliers, or Subcontractors, shall be removed from the Project site at the earlier of: (i) the completion of the Work requiring the use of such Hazardous Materials; (ii) the completion of the Work as a whole; or use of such Hazardous Materials; (ii) the completion of the Work as a whole; or (iii) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. Any damage to the Work, the Project site, or any adjacent property resulting from the improper use of or any discharge or release of Hazardous Materials shall be remedied by the Contractor at its sole cost and expense and in compliance with all applicable laws. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project site. The Contractor shall provide the Owner with copies of all warning labels on products which the Contractor or any of its Subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" or similar laws. The Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the Project site in accordance with all applicable laws and regulations. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or received by the Contractor, or of which the Contractor otherwise becomes aware, which relate to any Hazardous Materials on the Project site. Without limiting any other indemnification provisions pursuant to law or specified in this Agreement, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by Owner), and hold the Owner and Architect harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing or remedying the effect of any Hazardous Materials on, under, from, or about the Project site, arising out of or relating to, directly or indirectly, the Contractor's failure to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and any substances, materials, or wastes that are or become regulated under federal, state, or local law.

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§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the ~~condition.~~condition in writing.

...

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be

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extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

...

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~Intentionally deleted.

...

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~Intentionally deleted.

...

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located.~~ located as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project:

...

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

...

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities excluded by statute from the requirements of Clause 11.1.1 but required by the Contract Documents to be covered by the insurance required by that Clause;

...

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

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.4 Claims for damages insured by usual personal injury liability coverage;

...

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.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

...

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

...

.7 Claims for bodily injury or property damage arising out of completed operations; and

...

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section ~~The~~ 3.18.

...

The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

...

§ ~~**11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~11.1.2.1 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be

...

~~**§ 11.1.4 Notice** of **Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

...

~~**§ 11.2 Owner's Insurance**~~

...

~~**§ 11.2.1** The Owner shall purchase and maintain insurance of the types~~ "Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

...

~~and limits of liability, containing the endorsements,~~ **1.** Premises Operations (including X, C and U

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coverage as applicable).

...

2. Independent Contractor's Protective

...

~~and subject to the terms~~ **3.** Products and Completed Operations.

...

4. Personal Injury Liability.

...

5. Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.

...

~~and conditions, as described in the Agreement or elsewhere in the Contract Documents.~~ **6.** Owned, non-owned and hired motor vehicles."

...

~~The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~ **§11.1.2.2** The insurance required by Subparagraph 11.1.1 shall be written by an insurance company having an A rating or better by A.M. Best and shall be written in limits for not less than the minimum required by law or the following:

...

1. Worker's Compensation:

...

(a) State: Statutory

...

(b) Applicable Federal: Statutory

...

(c) Employer's Liability: $500,000 per Accident

...

$500,000 Disease, Policy Limit

...

$500,000 Disease, Each Employee

...

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2. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations):

...

(a) Each Occurrence: $1,000,000

...

Aggregate: $2,000,000

...

(b) Products and Completed Operations to be maintained for two years after final payment: $2,000,000 Aggregate

...

~~**§ 11.2.2 Failure** to **Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages~~ (c) Coverage to be extended to include the interests of the Architect and his consultants.

...

(d) No total pollution exclusion should be included.

...

~~and in~~ 3. Business Auto $1,000,000 Combined Single Limit for Bodily Injury and Property Damage.

...

4. Umbrella Excess Liability:

...

(a) Over Primary Insurance: $1,000,000 Each Occurrence

...

5. Occurrence Policy: $1,000,000 Each Occurrence

...

(applicable for asbestos related projects only)

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~~the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement~~ If the General Liability coverage is provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.

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...

~~of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain~~ **§11.1.2.3** Each policy of insurance listed above shall be purchased and maintained by the Contractor and each certificate of insurance for said insurance shall contain a complete waiver of subrogation against Owner, Architect and Architect's Engineers. Each certificate shall also list Owner, the Contractor of the Owner, Architect and Architect's Engineers as a party insured.

...

~~insurance that will protect the interests~~ **§11.1.2.4** Contractor shall not commence work at the site under this Contract until he has obtained all required insurance and submitted appropriate certifications.

...

~~of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~ **§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable.

...

§ ~~11.2.3~~ 11.1.4 Notice of Cancellation or Expiration of ~~Owner's Required Property~~ Contractor's Required Insurance. Within three (3) business days of the date the ~~Owner~~ Contractor becomes aware of an impending or actual cancellation or expiration of any ~~property~~ insurance required by the Contract Documents, the ~~Owner~~ Contractor shall provide notice to the ~~Contractor~~ Owner of such impending or actual cancellation or expiration. ~~Unless~~ Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of ~~the Contractor: (1) the Contractor, upon receipt of notice from~~ the Owner, ~~shall~~ have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by ~~either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order.~~ the Contractor. The furnishing of notice by the ~~Owner~~ Contractor shall not relieve the ~~Owner~~ Contractor of any contractual obligation to provide any required coverage.

...

§ 11.2 Owner's Insurance

...

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The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

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§ 11.6 PERFORMANCE BOND AND PAYMENT BOND

...

§ 11.6.1 The Contractor shall furnish a Performance Bond and a Payment Bond. The amount of each bond shall be equal to 100 percent of the Contract Sum. Any person or firm executing a bond upon the Contractor's Work under this Contract shall be deemed to have consented in advance to any changes in the Work made by order of Owner as set forth in Article 7; and any such changes made under these provisions shall in no way alter or impair the obligations of the person or firm executing such bond.

...

§11.6.1.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

...

§11.6.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney, indicating the monetary limit of such power.

...

§11.6.1.3 The Contractor shall provide each bond on the form required by Owner.

...

§11.6.1.4 No sureties will be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation pending against the Owner during the term of this Contract. All bonds shall be executed by a corporate surety authorized to do business in the State of Texas. The surety company or companies furnishing the surety bonds for this Contract must show a Texas Department of Insurance underwriting limitation not less than the total amount of the Contract. Each bond shall be executed by the Contractor and the Owner. Should any surety be determined unsatisfactory at any time by the Owner, notice will be given to the Contractor, and the Contractor shall immediately provide a new surety (complying with Article 11) acceptable to the Owner and at no additional cost to the Owner. This Contract shall not be valid nor will any payments be due or paid until approval of each bond by the Owner.

...

§ 11.6.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

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§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, ~~the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate.~~ costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, ~~the costs of uncovering the Work,~~ such costs and the cost of correction, shall be at the Contractor's ~~expense.~~expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

...

§ 12.2.2.3 The one-year period for correction of Work shall ~~not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~be extended from the date corrective Work is performed by the Contractor.

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§12.2.6 Owner shall have the right to operate equipment until defects are corrected and warranties met, and shall have the right to operate rejected equipment until it is replaced without charge for depreciation, use or wear.

...

The Contract shall be governed by the law of the place where the Project is ~~located, excluding that jurisdiction's choice~~ located.

...

~~of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~**§13.1.2** The Owner has adopted a prevailing wage rate schedule as more fully described in the Project Manual or other Contract Documents. The Contractor and each Subcontractor shall pay to all laborers, workmen and mechanics employed by them in the execution of this Work not less than such rates for each craft or type of workman or mechanic needed to execute the Work. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than an hourly rate fairly comparable to the prevailing wage rates adopted by Owner. This determination of prevailing wages shall not be construed to prohibit the payment of more than the rates shown. In compliance with Texas Government Code, Chapter 2258, the Contractor and each subcontractor shall forfeit, as a penalty to the Owner, sixty dollars ($60.00) for each laborer, workman or mechanic employed by them, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the rates adopted by Owner.

...

§ 13.3 Written Notice

...

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

...

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§ 13.4 Rights and Remedies

...

§ ~~13.3.1~~ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

...

§ ~~13.3.2~~ 13.4.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

...

§ ~~13.4~~ 13.5 Tests and Inspections

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§ ~~13.4.1~~ 13.5.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections, or approvals that do not become requirements until after bids are received or negotiations ~~concluded. The Owner shall directly arrange and pay for~~ concluded and (2) tests, inspections, or approvals where building codes or applicable laws or regulations ~~so require.~~prohibit the Owner from delegating their cost to the Contractor.

...

§ ~~13.4.2~~ 13.5.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section ~~13.4.1,~~ 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section ~~13.4.3,~~ 13.5.3, shall be at the Owner's expense.

...

§ ~~13.4.3 If~~ 13.5.3 If such procedures for testing, inspection, or approval under Sections ~~13.4.1 and 13.4.2~~ 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

...

§ ~~13.4.4~~ 13.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

...

§ ~~13.4.5~~ 13.5.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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...

§ ~~13.4.6~~ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

...

§ ~~13.5~~ 13.6 Interest

...

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at twelve percent (12%) per annum.

...

§ 13.7 Time Limits on Claims

...

~~the rate~~ The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

...

§13.8 Equal Opportunity

...

§13.8.1 The Contractor shall maintain policies of employment as follows:

...

§13.8.1.1 The Contractor and Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

...

~~the parties agree upon in writing or,~~ **§13.8.1.2** The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

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...

§13.9 Criminal Background

...

§13.9.1 No person shall be engaged by the Contractor or any Sub-Contractor to work on Owner property where students are present who have charges pending, or who have been convicted, received probation or deferred adjudication for the following:

...

1. Any offense against a child;

...

2. Any sex offense;

3. Any crimes against persons involving weapons or violence;

...

4. Any felony offense involving controlled substances;

...

5. Any felony offense against property; or

...

6. Any other offense that the Owner believes might compromise the safety of students, staff or property.

...

It shall be the responsibility of the Contractor and Sub-Contractor to ensure compliance with this provision.

...

§13.9.2 Any person associated with, engaged and/or representing on site or doing business with the Owner shall submit such background information as may be requested by the Owner in ~~the absence thereof,~~ order to enable the Owner to perform criminal background evaluations/investigations for the following individuals:

...

1. General Contractor - Project Manager, Superintendent, Field Engineers and Foreman.

...

2. Subcontractors - Project Manager, Superintendent, Foreman.

...

3. Trades - Management personnel on site.

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...

A copy of Criminal History Check form shall be available for review by the employer and affected party at the Owner's Administrative Office during normal business hours.

...

§13.10 Working Time and Working Restrictions

...

§13.10.1 THE ENTIRE BUILDING SHALL REMAIN TOBACCO-FREE AT ALL TIMES.

...

§13.10.2 Normal working hours and normal working days for Contractor's work on this Project shall be between 7:00 a.m. and 8:00 p.m., Monday through Friday, except as otherwise noted below. The Owner may require that certain limited portions of the Work be accomplished after normal working hours or other than on normal working days.

...

§13.10.3 Should Contractor desire to carry out portions of the Work at times other than between the hours and days stipulated above, he shall submit written request to do so to the Owner together with specific calendar days and hours he wishes to work and a description of the activities he proposes to carry out during those times. Construction activities will not be permitted at ~~the legal rate prevailing from~~ times other than those specified or subsequently approved in writing by the Owner. Only those activities specifically approved by Owner will be permitted during hours or on days other than those stipulated above.

...

§13.10.4 No extension of time will be granted and no "extra" or additional amount will be paid due to failure of Owner to approve performing of construction activities during hours other than those stipulated above.

...

§13.10.5 Work performed other than between 7:00 a.m. and 8:00 p.m., Monday through Friday, shall be done at no additional cost, whether work at other times is required by Owner or requested by Contractor and approved by Owner.

...

§13.10.6 If necessary in order to complete Work within time fixed in Contract or any extension thereof, Contractor shall request approval from Owner to perform work before 7:00 a.m. or after 8:00 p.m. or on weekends or holidays, and if Owner approves, shall perform work during such additional times and on such additional days as have been approved, at ~~the place where~~ no additional cost to Owner. Work during such additional times and on such additional days shall continue only so long as is necessary to return work to on schedule or to complete the Work within the Contract Date.

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...

~~the Project is located.~~**§13.10.7** The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

...

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the ~~Contractor, a Subcontractor, a Sub-subcontractor,~~ Contractor or a Subcontractor, Sub-subcontractor or their agents or employees, or any other persons or entities performing portions of the ~~Work,~~ Work under direct or indirect contract with the Contractor, for any of the following reasons:

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.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

...

.3 Because ~~the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because~~ the Owner has not made payment on a Certificate for Payment approved by the Architect within thirty (30) days after receipt of written notification from Contractor that the time for payment stated in the Contract ~~Documents; or~~

...

~~**.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~Documents has expired.

...

§ 14.1.2 ~~The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.~~Intentionally deleted.

...

§ 14.1.3 If one of the reasons described in Section 14.1.1 ~~or 14.1.2~~ exists, the Contractor may, upon ~~seven days'~~ fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed, as well as reasonable overhead and profit on Work not ~~executed, and costs incurred by reason of such termination.~~executed.

...

§ 14.1.4 ~~If~~ Intentionally deleted.

...

~~the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work~~

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~~because the Owner has repeatedly failed to fulfill the Owner's obligations under~~ **§14.1.5** Any payment due to, or recovered by, Contractor under paragraph 14.1.3 above shall not exceed the remainder, if any, after subtracting the total of the previous payments made by Owner to Contractor from the lesser of:

...

~~the Contract Documents with respect to matters important to the progress of the Work,~~ (a) the fair value (not Contractor's cost or profit) of the properly executed Work; or

...

~~the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~(b) an amount determined by multiplying the contract price, as adjusted by change orders, times the percentage of Work completed.

...

.4 otherwise is guilty of substantial breach of a provision of the Contract ~~Documents.~~Documents; or

...

.5 Contractor becomes insolvent or makes a general assignment for the benefit of its creditors.

...

§ 14.2.2 When any of the ~~reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action,~~ above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

.3 Finish the Work by whatever reasonable method the Owner may deem expedient.~~Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

...

§ 14.2.4.1 The costs of finishing the Work include, without limitation, all direct costs incurred by the Owner by reason of the termination of the Contractor as stated herein, including without limitation, attorney and other professional fees, insurance premiums and interest costs.

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§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum ~~shall~~ may include profit. No adjustment shall be made to the extent

...

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

...

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§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within ~~21~~ 10 days after occurrence of the event giving rise to such Claim or within ~~21~~ 10 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

...

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party.~~In such event, no decision by the Initial Decision Maker is required.~~

PAGE 51

§ 15.1.4.2 ~~The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will~~ The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

...

If the Contractor wishes to make a Claim for an increase in the Contract ~~Sum, notice as provided in Section 15.1.3 shall be given~~ Sum or for extra costs or damages, he shall give the Architect and the Owner written notice thereof within ten days after the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the portion of the Work that is the subject of the ~~Claim. Prior notice is not required for Claims relating to~~ Claim except in an emergency endangering life or property ~~arising under Section 10.4.~~ in which case the Contractor shall proceed in accordance with paragraph 10.4. Such claim, with the recommendation of the Architect, will be submitted to the Owner and its action shall be final and binding. Failure to give such notice shall be a waiver of the claim and such claim or possible claim shall be invalid and unenforceable unless so made. Compliance by the Contractor with this paragraph does not validate any claim which is otherwise invalid.

...

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, ~~notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.~~the Contractor shall provide written notice as required by Sections 8.3.1 and 8.3.5.

...

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented ~~by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.~~in accordance with Section 8.3.5.

...

§ 15.2 Initial Decision - Intentionally Deleted

...

~~**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been~~

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~~rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~

...

§ 15.2.2 ~~The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~

...

§ 15.2.3 ~~In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.~~

...

§ 15.2.4 ~~If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.~~

...

§ 15.2.5 ~~The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~

...

§ 15.2.6 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~

...

§ 15.2.6.1 ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

...

§ 15.2.7 ~~In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~

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...

~~**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

...

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to ~~binding dispute resolution.~~the institution of legal or equitable proceedings by either party.

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§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation ~~which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.~~ which shall be in accordance with the provisions of Section 154.023, Texas Civil Practice and Remedies Code. A request for mediation shall be ~~made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~filed in writing with the other party to this Contract.

...

§ 15.3.3 ~~Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~Intentionally deleted.

...

§ 15.4 Arbitration – Intentionally Deleted

...

~~**§ 15.4.1** If~~

...

§ARTICLE 16: ADDITIONAL PROVISIONS FOR LIQUIDATED DAMAGES

...

§16.1 Contractual Provisions

...

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~~**the** parties have selected arbitration as **the** method **for** binding dispute resolution **in the** Agreement, any Claim subject to, but not resolved by, mediation shall **be** subject to arbitration which, unless the parties mutually agree otherwise,~~ §16.1.1 **It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the Work to be done hereunder are essential conditions of this Contract.**

...

~~**shall be** administered by the American Arbitration Association **in accordance with** its Construction Industry Arbitration Rules in effect on **the** date **of the** Agreement. The Arbitration shall be conducted in **the** place where **the** Project **is** located, unless another location is mutually agreed upon. A demand **for** arbitration~~ §16.1.2 **Contractor agrees that said work shall be prosecuted in accordance with the provisions of this Contract at such a rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and Owner, that the time for the completion of the Work described herein is a reasonable time for completion of the same.**

...

~~shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~**§16.1.3** If the said Contractor shall neglect, fail or refuse to complete the Work within the time indicated above or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to

...

~~**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request **for** mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract, as hereinafter set forth for **$500.00, for each and every calendar day** that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. Such damages shall be cumulative and not in lieu of any other rights or remedies of Owner against Contractor as a result of any breach by Contractor hereunder.

...

§~~**15.4.2 The** award rendered **by the** arbitrator or arbitrators shall be final, **and** judgment may be entered upon it **in** accordance with applicable law in any court having jurisdiction thereof.~~16.1.4 **The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain.**

...

~~**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in~~ **§16.1.5** It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever, and where under the Contract an additional time is allowed for the completion of any work, the new time fixed by such an extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess costs when the delay in completion of the Work is due:

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...

~~any court having jurisdiction thereof.~~**.1** To any

...

~~§ 15.4.4 Consolidation or Joinder~~ performance, priority or allocated order duly issued by the Government;

...

~~§ 15.4.4.1~~ ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~**.2** To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;

...

~~§ 15.4.4.2~~ ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~**.3** To any delays of subcontractors or suppliers occasioned by any of the causes specified in subparagraphs of this Article.

...

~~§ 15.4.4.3~~ ~~The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~**§16.1.6** Provided, further, that the Contractor shall, within 10 days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner in writing of the cause of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

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I, Christopher C. Zillmer/mls, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:54:11 CT on 01/13/2023 under Order No. 2114312451 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

Christopher C. Zillmer/mls

(Signed)

(Title)

01/13/2023

(Dated)

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EXHIBIT A

HIDELL
ASSOCIATES
ARCHITECTS

January 11, 2023

City of Sherman
Zachary Flores
Executive Director of Public Safety
220 W Mulberry Street
Sherman, Texas 75090

Re: Contract Proposal for Renovation / Addition of Fire Station No. 1

Zach,

Hidell and Associates Architects, Inc. (HAA), is pleased to submit this proposal to provide professional services relating to the renovation and addition for Fire Station No. 1.

Having developed a conceptual layout as part of the Fire Facility Assessment, we understand the scope of the project to include the renovation and expansion of the existing Fire Station No. 1. The goal of the renovation and expansion is to reconfigure the fire house to accommodate 10 crew, and a Battalion Chief, utilizing the existing bay configuration for apparatus storage. The facility will be renovated to include all required support spaces to promote health transitions from equipment to living quarters. The exterior façade shall be as required to achieve a cohesive design. The facility will be a single-story structure with approximately 10,800 sf of area under roof.

Our services shall provide Basic Services (Architecture, MEP Engineering, Structural Engineering) and Supplemental Services (Civil engineering, Furniture and Equipment design and procurement and Landscape Architectural Services). The fee includes the coordination and implementation of all basic and supplemental services as indicated in this letter. All required programming, meetings (staff, town personnel and special stakeholders), and the associated required documentation under each project phase (schematic, design development, construction document, CMAR selection and pricing) have been included. In addition, (HAA) has provided credit under the Basic Services for the previously completed conceptual design work. (Floor plan and preliminary cost).

HAA understands the city's desire to develop the project to determine a construction/project cost for city review and approval in the spring of 2023. Our fee has been structured to provide basic and supplemental services to develop the drawings for CMAR pricing. Our proposed total fee of $302,200 is broken down as follows:

Compensation

A. <u>Basic A/E Services:</u>

We propose to provide the services described above for the lump sum of **$244,000.00**. We will invoice monthly in proportion to the percent completion thru the end of the previous month, with the total billings not to exceed the following percentages.

o Conceptual Design Phase	5%
o Schematic Design Phase	10%
o Design Development Phase	20%
o Construction Document Phase	40%
o Bidding	5%
o Construction Administration	20%

B. Supplemental Services:

We propose to provide the services described below for the lump sum of **$58,200.00**. We will invoice monthly in proportion to the percent completion thru the end of the previous month, with the total billings not to exceed the following amounts:

Civil Engineering	
○ Topographic and ALTA Survey	$6,700.00
○ Site Plan	$6,000.00
○ Construction Documents	$18,000.00
○ Storm Water Pollution Prevention Plan (SWPPP)	$1,500.00
Civil Engineering Total	$32,200.00
Other Services	
○ Geotechnical Report	$4,000.00
○ Landscape Design Services	$12,000.00
○ Equipment & Furniture Selection	$10,000.00
▪ *Fee includes the layout and selection of furniture for use in coordination during facility design.*	
Other Services (if required – not included in fee)	
○ As-Built Documents	$2,500.00
▪ *Preparation of CAD files to match as-built conditions*	

C. Additional Services:

Additional services, if required and requested, will be invoiced either on a negotiated lump sum fee or on an hourly basis using the rates quoted below:

○ Principal…….	$200.00/hr
○ Project Architect……	$180.00/hr
○ Architect…….	$100.00/hr
○ CADD……	$80.00/hr
○ Administration……	$60.00/hr

Based on our understanding of the scope of services; the following items are not included in this proposal:

Exclusions

- Environmental investigation
- Material Testing Services (by third party)
- Sub-soil drainage / water flow / pressure tests / French drain systems around building perimeter
- Substantial detention improvements. Based on the record drawings for the existing facility, it is presumed that the existing detention basin size and configuration are adequate to accommodate the proposed development, although the project may include the extension new storm drains to the basin.
- LEED certification / Commissioning
- Detailed Fire Sprinkler or Alarm Design (Performance spec only by Engineer) – General Contractor and Fire Subcontractor to design and provide and shall be submitted for Design Team to review as a shop drawing submittal.
- Cost estimating (to be performed by others [CMAR] and assisted by architect).
- Traffic Impact Analysis, traffic engineering report / study

Our drawings will be prepared using AutoCAD 2022 utilizing our standard symbols, layering systems, and data presentation. All electronic files will remain property of Hidell and Associates Architects, Inc.

The Design Team will prepare and submit to the Owner for review conceptual design documents consisting of drawings and other documents illustrating the scale and relationship of Project components. Based on the conceptual design documents and any adjustments authorized by the Owner, the Design

Team will prepare and submit to the Owner for review; schematic design documents consisting of drawings and other documents illustrating the scale and relationship of Project components. Based on the schematic design documents and any adjustments authorized by the Owner in its program, desired schedule or Project budget, the Design Team will prepare and submit to the Owner for review; design development documents consisting of drawings and other documents to fix and describe the size and character of the project as architectural, structural, mechanical and electrical systems, security and safety systems, materials and such other elements as may be appropriate. The Design Team will submit for review the construction documents at the 50% complete and 95% complete for a status review by Owner and CMAR. The Design Team will perform its services expeditiously.

Reimbursable Services

1. Reimbursable expenses, such as printing / plotting / deliveries / communication and travel (automobile mileage) will be billed in addition to the base fee and supplemental fee at direct cost (not to exceed $3,500.00).

We have provided as accompanying back-up to our Fee Proposal the attached document identified as "**Exhibit B – Work Activities**"

Sincerely,
Hidell and Associates Architects

Aaron Babcock
Principal

Cc: Bill Hidell, AIA

City of Sherman Fire Station NO. 1

Proposed Scope of Work

1.5.2023

Phase

Conceptual Design Phase Activities

Facilty Tours
Geotechnical Report
Use concept plan developed in assessment report as a basis for design
Refine concept plan
Develop concept site plan
Develop concept exterior elevations
Review worksessions - *(Programming and concept worksessions)*
    On-site presentation and refinement session
City Presentations (As requested)

Schematic Design Phase Activities

Pre-Development Meeting
Preliminary Site Plan
Preliminary Floor Plan
Preliminary Furniture and Equipment Layout
Preliminary Building Elevations
Engineering systems concepts
Schematic Documents submitted for Review
Documents for Review (Site Plan, Floor Plan, Elevations, Project Narrative)
Review worksessions - *(Estimate 3 worksessions)*
    On-site presentation and refinement session
Refinement of plan based on City Comments / CMAR Review and Cost
CMAR Cost and Constructablity Review
City Presentations (As requested)

City of Sherman Fire Station NO. 1

Proposed Scope of Work

1.5.2023

Phase

Design Development Phase Activities

Exterior shell materials selection
Interior material selection
Landscape plan development
Refinement of site plan design
Refinement of buidling design
Formulation of Structural / Mech / Elec. Systems

Exterior Shell / Site Documents submitted for reivew

DD Exterior
- Site Plan
- Landscape Plan
- Building Sections
- Wall Sections
- Roof Plan
- Exterior Material Selection Presentation
- Exterior Elevations

Interior Finish-Out Documents submitted for review

DD Interior
- Dimensional Floor Plan
- Furniture Layout Plan
- Reflected Ceiling Plan
- Door and Window Schedule
- Interior Elevations
- Interior Material Selection Presentation
- Millwork
- Equipment Selection

Security System Coordination
Door hardware / Access Control Coordination
A/V coordination
Telecommunications / Data Coordination
Review worksession - *(Estimate 3 worksessions)*
- On-site presentation and refinement session

Refinement of plan based on City Comments
CMAR Cost and Constructablity Review
City Presentations (Design and Proposed Cost)

City of Sherman Fire Station NO. 1

Proposed Scope of Work

1.5.2023

Phase

Construction Document

Record Document Development
Finalize exterior materials selection
Finalize interior material selections
Finalize site design
Finalize building design
Finalize Structural / Mech / Elec. Systems
Finalize specifications
City Presentations (As requested)

Documents for Review (50% set)

- Site Documents - 50% set
- Building Documents - 50% set
- Specifications - 50%
- Final Material Selections Boards
- Finalize documents based on 50% feedback

Documents for Review (95% set)

- Site Documents - 95% set
- Building Documents - 95% set
- Specifications - 95%
- Make corrections based on 95% feedback

Issue for Building Permit

Issue for Final GMP Pricing

City of Sherman Fire Station NO. 1

Proposed Scope of Work

1.5.2023

Phase

Construction Administration Phase Activities

Preconstruction Conference
Site Meetings
Engineering Coordination Construction Administration
R.F.I. Review
Shop Drawing Review
Substitutions Review
A.S.I Submission
Change Order procedures
Punch List

Furniture Procurement Phase Activities

Activities will occur throughout the project schedule

Finalize Furniture layout
Furniture selection
Furniture material finish selection
Develop documents for bidding / pricing
Bidding or State Contract procurement
Installation review
Punch list

dlagrone H:\ENGINEERING\GIS\ArcGIS Pro Projects\Planning\Public Notification.aprx

Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Development Services Department

CITY OF SHERMAN

318 S Travis St
(Central Fire Station)

N
W E
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Date: 1/11/2023 9:56 AM

Scale: 1:2,400

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 2.**

Meeting Date: 01/17/2023

Prepared By: Zachary Flores, Executive Director of Public Safety

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7014

Authorizing Execution of a Professional Services Agreement Between Owner (City of Sherman) and Architect (M. Arthur Gensler Jr. & Associates, Inc.) for the Design of the New Sherman City Hall

Issue:

To consider a contract for professional services with M. Arthur Gensler Jr. & Associates, Inc. (Gensler) for the Design of the New Sherman City Hall

Background:

City Hall was renovated from the city's old post office in 2001. City staff has since outgrown the available space in City Hall, requiring the City to explore options to allow for the growth of staff. This contract will allow for Gensler to help determine the space needs of City Hall and evaluate potential site locations for suitability.

This contract will also allow the firm to estimate the construction costs of a potential new city hall.

Origination:

City Manager's Office

Financial Consideration:

The contract is for a lump sum fee of $137,400.00 to include the following:
- City Hall and Masterplan Visioning Workshop
- Concept Design
- 25% Schematic Design, Bid Support, Final 25% Deliverable

Staff Recommendation:

Staff recommends approval of the contract for professional services with M. Arthur Gensler Jr. & Associates, Inc. for the preliminary Design of the New Sherman City Hall

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 7014
Agreement
Exhibit A
Architectural Fees
Aerial Location Map

RESOLUTION NO. 7014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT BETWEEN OWNER (CITY OF SHERMAN) AND ARCHITECT (M. ARTHUR GENSLER JR. & ASSOCIATES, INC.) FOR THE DESIGN OF THE NEW SHERMAN CITY HALL; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a professional services agreement with M. Arthur Gensler Jr. & Associates, Inc. for design of the new Sherman City Hall in accordance with all contract documents attached hereto and made a part hereof for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 17th day of January 2023.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____ **BY:** _____
LINDA ASHBY, CITY CLERK **DAVID PLYLER, MAYOR**

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____
NAME: _____
CITY ATTORNEY

AGREEMENT

BETWEEN

THE CITY OF SHERMAN, TEXAS AND

M. ARTHUR GENSLER JR. & ASSOCIATES, INC.

FOR

PROFESSIONAL SERVICES

Made as of the_____day of_____, 2022:

Between City: **The City of Sherman, Texas**
220 W. Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7208

and Consultant: **M. Arthur Gensler Jr. & Associates, Inc.**
5005 Greenville Ave.
Dallas, TX 75206
Telephone: (214) 273-7418

for the following Project: **Sherman City Hall and Masterplan—Phase I**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Sherman, Texas, a home-rule municipality ("City"), and M. Arthur Gensler Jr. & Associates, Inc., a California corporation ("Consultant"), to be effective from and after the date as provided above. City and Consultant are at times each referred to herein as a "party" or collectively as the "parties."

WHEREAS City desires to engage Consultant to provide professional services for the Sherman City Hall and Masterplan Project ("Project"); and

WHEREAS Consultant desires to render such professional services ("Services") for City on the terms and conditions provided herein.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, for the mutual benefits to be obtained hereby and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1
CONSULTANT'S SERVICES

1.1 **Employment of Consultant** – City hereby agrees to retain Consultant to perform the Services in connection with the Project. Consultant agrees to perform the Services in accordance with the terms and conditions of this Agreement. Consultant further agrees that if any employee of Consultant who is performing the day-to-day Services under this Agreement for the Project is separated, for any reason, from employment with Consultant, Consultant shall provide City with written notice thereof at least five (5) business days' prior to said separation unless circumstances reasonably warrant a shorter notice period, which shall not exceed two (2) business days following the separation.

1.2 **Scope of Services** – The parties agree that Consultant shall perform the Services as are set forth and described in **Exhibit A**, attached hereto and incorporated herein by reference for all purposes ("Scope of Services"). The parties understand and agree that deviations or modifications to the Scope of Services described in **Exhibit A**, in the form of a written amendment to this Agreement, may be authorized from time to time by City ("Amendment").

1.2.1 **Requirement of Written Amendment** – "Extra" work, "claims" invoiced as "extra" work or "claims" which have not been issued as a duly executed, written Amendment by the Sherman Director of Engineering or designee will not be authorized for payment and/or shall not become part of this Agreement. A duly executed, written Amendment requiring additional funding of $50,000 or more of the original contract amount shall be preceded by the Sherman City Council's authorization for the Sherman City Manager to execute said Amendment.

1.2.2 **CONSULTANT SHALL NOT PERFORM ANY "EXTRA" WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED, WRITTEN AMENDMENT ISSUED BY THE CITY**.

1.3 **Schedule of Work** – Consultant agrees to commence work immediately on the execution of this Agreement, and to proceed with said work to completion as expeditiously as is consistent with the Standard of Care and orderly progress of the Project, as described in Exhibit A and incorporated herein by reference for all purposes. Consultant shall not be responsible for delays due to factors beyond its reasonable control.

1.4 **Standard of Care** – Consultant shall perform the Services required hereunder in accordance with the prevailing architectural standard of care by exercising the skill and care ordinarily utilized by architects performing the same or similar services under the same or similar circumstances in the State of Texas. Nothing in this Agreement or otherwise shall be construed to require Architect to perform beyond the Standard of Care.

ARTICLE 2
CITY'S RESPONSIBILITIES

City shall do the following in a timely manner so as not to delay the Services of Consultant:

2.1 **Project Data** – City shall furnish required information that is reasonably requested by Consultant and that City has in its possession at the time of Consultant's request, as expeditiously as necessary for the orderly progress of the Project, and Consultant shall be entitled to rely upon the accuracy and completeness of the information furnished by City under this Article 2.1.

2.2 **City Project Manager** – When necessary in City's sole discretion, City shall designate a representative authorized to act on City's behalf with respect to the Project ("Project Manager"). City, the Project Manager and/or his or her authorized designee shall examine the documents submitted by Consultant and shall render any required decisions pertaining thereto as soon as practicable to avoid unreasonable delay in the progress of Consultant's Services.

ARTICLE 3
CONSULTANT'S COMPENSATION

3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) for Basic Services, on a lump sum basis in an amount not to exceed **One Hundred Thirty-Seven Thousand Four Hundred Dollars ($137,400.00)**; ("Consultant's Fee"); and (b) for Direct Expenses and approved Additional Services, as detailed in Exhibit A hereto, and (c) paid in accordance with this Article 3 and as set forth in **Exhibit A**.

3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. Consultant's compensation for Direct Expenses incurred in connection with the Project will be based on amounts invoiced to Consultant plus fifteen percent (15%). All submitted Direct Expenses are to be consistent with **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment for Services; provided, however, that this shall not be City's sole and exclusive remedy for said over-payment.

3.3 **Additional Services** – Consultant shall provide the Services as described in the Scope of Services set forth in **Exhibit A** of this Agreement. If authorized in writing

by City, Consultant shall provide additional services, to be compensated as provided in an Amendment to the Contract on a cost not to exceed sum or hourly basis in accordance with this paragraph ("Additional Services") and a mutually agreed estimate of man-hours and expenses, unless otherwise agreed by the parties in writing. These services may include, but are not limited to:

3.3.1 Additional meetings, hearings, work-sessions or other similar presentations which are not provided for or contemplated in the Scope of Services described in **Exhibit A**.

3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.5 Such other Additional Services as detailed in **Exhibit A**.

3.3.6 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on direct billable labor rates and expenses.

3.3.7 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to and approved by City.

Hourly Billable Rates by Position

Position	Hourly Rate
Principal	$370.00- 450.00
Design Directors	$150.00 – 310.00
Technical Directors	$190.00 – 330.00
Digital Design Directors	$320.00 – 390.00
Senior Design Managers	$200.00 – 280.00
Design Managers	$150.00 – 210.00
Senior Tech/Architects	$200.00 – 280.00
Tech/Architects	$100.00 – 210.00
Senior Interior Designers	$160.00 – 230.00
Interior Designers	$100.00 - $170.00

Graphic/Brand Designers	$100.00 – 190.00
Digital Design Strategists	$150.00 – 270.00
Industry Specialists	$210.00 – 290.00
Consulting Strategists	$210.00 – 300.00
Consulting Analyst	$120.00 – 180.00
Spec Writers	$150.00- 240.00
Project Coordinators	$120.00- 160.00

3.4 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to City. Consultant shall submit monthly invoices for Services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or shall submit invoices to City immediately upon completion of each individual task listed in **Exhibit A**. On all submitted invoices for Direct Expenses and Services performed on an hourly basis, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Upon request, such background material may include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices shall provide a summary methodology for administrative markup and/or overhead charges.

3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.

3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5 of this Agreement. If a dispute is resolved in favor of City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

3.7 **Failure to Pay** – Failure of City to pay an invoice, for a reason other than on written notification as stated in the provisions of Article 3.6 of this Agreement, to Consultant within sixty (60) days from the date of the invoice shall grant Consultant

the right, in addition to any and all other rights provided, to, upon written notice to City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10^{th}) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter "D" of the TEX. GOV'T CODE..

3.8 **Adjusted Compensation** – If the Scope of the Project ("Scope of the Project") or if the Services are materially changed due to no error by Consultant in the performance of Services under this Agreement, the amounts of Consultant's compensation shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Consultant as a result of any material change to the Scope of the Project shall be authorized by written Change Order duly executed by both parties before the Services are performed.

3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed prior to suspension or abandonment. In the event of such suspension or abandonment, upon payment to Consultant of all sums due and owing, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant solely and exclusively for this Agreement. If the Project is resumed after being suspended for more than three (3) months, Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed

ARTICLE 4
OWNERSHIP OF DOCUMENTS

4.1 **Documents Property of City** – The Project is the property of City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any materials created solely and exclusively for the Project for any other purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in **Exhibit A**. All such reproductions shall be the property of City who may use them without Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at City's own risk.

4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that City is a governmental entity and that, subject to Article 4.1 herein, all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared or furnished by Consultant (and

Consultant's professional associates and/or sub-consultants) under this Agreement are instruments of service in respect of the Project. Upon completion of the Project, all of the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or sub-consultants) shall thereafter be subject to the Texas Public Information Act (Chapter 552, TEX. GOV'T CODE, as amended) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5
CONSULTANT'S INSURANCE REQUIREMENTS

5.1 **Required General Liability Insurance** – Consistent with the terms and provisions of **Exhibit E**, Contractor Insurance Guidelines, which is attached hereto and incorporated herein by reference for all purposes, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a general liability insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars ($2,000,000.00) in the aggregate. Such policy shall name City, its officers, agents, representatives, and employees as additional insureds as to all applicable coverage. Such policy shall provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

5.2 **Required Professional Liability Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) for each claim, and Two Million and 00/100 Dollars ($2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

5.3 **Required Workers Compensation Insurance** – Consistent with the terms and

provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent service(s), and is authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage** – If the Project's size and scope warrant, and if identified on the checklist located in **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars ($2,000,000.00). Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

ARTICLE 6
CONSULTANT'S ACCOUNTING RECORDS

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project on an hourly basis shall be kept on the basis of generally accepted accounting principles. Invoices will be sent to City as indicated in Article 3.4 of this Agreement. Copies of employee time sheets for services performed on an hourly basis, receipts for direct expense items and other records of Project expenses will be made available if requested.

ARTICLE 7
AUDITS AND RECORDS/VENDOR DISCLOSURE

Consultant agrees that, upon reasonable request, during normal business hours as City may deem necessary, Consultant shall make available to representatives of City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be

required by applicable statute or other lawful requirement.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, TEX. LOC. GOV'T CODE, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute and deliver to City the Conflict of Interest Questionnaire, Form CIQ, attached hereto as **Exhibit F** and incorporated herein for all purposes, no later than the Effective Date of this Agreement.

ARTICLE 8
TERMINATION OF AGREEMENT/REMEDIES

City may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, without prejudice to any other remedy it may have. If City terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed in accordance with the provisions of this Agreement prior to termination, plus Direct Expenses then due.

In the event of any termination, subject to Article 4 herein, Consultant shall deliver to City all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared by Consultant in connection with this Agreement.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

ARTICLE 9
DISPUTE RESOLUTION/MEDIATION

In addition to all remedies at law, the parties may agree to attempt to resolve any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator. However, if both parties do not agree to voluntarily mediate any such controversy, claim or dispute, mediation shall not be required.

ARTICLE 10
INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY

DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONSULTANT" FOR PURPOSES OF THIS ARTICLE 10) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, THAT IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY

GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS ("JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, WITHIN SIXTY (60) DAYS OF THE DATE THE JUDGMENT BECOMES FINAL AND NON-APPEALABLE. IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN CONSULTANT'S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 10 ARE LIMITED BY, AND TO BE READ AS COMPLYING WITH, SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF

CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 11
NOTICES

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing the same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested; by facsimile; by electronic mail, with documentation evidencing the addressee's receipt thereof; or by delivering the same in person to such party a via hand-delivery service, or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to City, addressed to:

Zachary Flores
Executive Director of Public Safety
City of Sherman
220 W Mulberry St.
Sherman, TX 75091
Telephone: (903) 892-7305
Email: zacharyf@cityofsherman.com

With a copy to:

Abernathy, Roeder, Boyd & Hullett, P.C.
Attention: Ryan D. Pittman
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Facsimile: (214) 544-4054
Email: rpittman@abernathy-law.com

If to Consultant, addressed to:

Brian Nicodemus
M. Arthur Gensler Jr. & Associates, Inc.
5005 Greenville Avenue
Dallas, Texas 75206

Telephone: (214) 866-2473
Email: brian_nicodemus@gensler.com

ARTICLE 12
MISCELLANEOUS

12.1 **Complete Agreement** – This Agreement, including the exhibits hereto labeled "A" through "F," all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or

modified except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

12.1.1 **Exhibit A**, Scope of Services.

12.1.2 **Exhibit B**, Reserved.

12.1.3 **Exhibit C**, Guidelines for Computer Aided Design and Drafting (CADD).

12.1.4 **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.

12.1.5 **Exhibit E**, Contractor Insurance Guidelines.

12.1.6 **Exhibit F**, Conflict of Interest Questionnaire, Form CIQ.

To the extent that **Exhibit A**, **Exhibit B**, **Exhibit C**, **Exhibit D**, **Exhibit E**, or **Exhibit F** are in conflict with provisions of this Agreement or each other, the provisions of this Agreement, then the provisions of Exhibit A, **Exhibit B**, **Exhibit C**, **Exhibit D**, **Exhibit E**, or **Exhibit F** shall prevail in that order.

12.2 **Assignment and Subletting** – Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of City. Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Consultant of its full obligations to City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.

12.3 **Attorney's Fees** – If either party files any action or brings any proceeding against the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.

12.4 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Agreement.

12.5 **Savings/Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.

12.6 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.

12.7 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.

12.8 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

12.9 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

12.10 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.

12.11 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

12.12 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.

12.13 **Incorporation of Recitals** – The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.

12.14 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.

12.15 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.

12.16 **No Third-Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

12.17 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.

12.18 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.

12.19 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.

12.20 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.

12.21 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds

awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.

12.22 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's current fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's current fiscal year unless and until such funds are budgeted.

12.23 **Certifications Required by Texas Law** – In accordance with Chapter 2270 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not boycott Israel and will not boycott Israel during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter 809 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not boycott energy companies and will not boycott energy companies during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter 2274 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of any contract with City, including during the term of this Agreement. The foregoing terms have the meanings ascribed to them in the referenced statutes if defined therein.

12.24 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.

12.25 **Reference to City** – When referring to "City," this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date set forth in the introductory clause of this Agreement.

CITY: **CONSULTANT:**

City of Sherman, Texas,
a Texas home-rule municipality

By: _____
Robby Hefton, City Manager

M. Arthur Gensler Jr. & Associates, Inc.
a California corporation

By: _____
Barry Hand, Principal

APPROVED AS TO FORM:

_____
Abernathy, Roeder, Boyd & Hullett, P.C.
Ryan D. Pittman, City Attorneys

STATE OF TEXAS §
§
COUNTY OF_____ §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **BARRY HAND**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE FOR **M. ARTHUR GENSLER JR. & ASSOCIATES, INC.**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS_____DAY OF _____ _____2023.

_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
RESERVED

1. Files shall done in DWG/DXF format.

2. Files shall be georeferenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83 Grid.

3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.

4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.

5. The file shall contain required features for the project type, if applicable, as detailed below:

    a. Pre-Construction/As-Built Plans and/or Record Documents:
        i. Layers from Final Plat Requirements as Applicable to Project Type.
        ii. Water Utility Features.
        iii. Sanitary Sewer Features.
        iv. Storm Sewer Features.

6. Each required feature group should be provided as a separate layer within the file.

7. Layer names should be representative of the information contained in the layer.

8. Line work should be done per accepted industry norms.

9. Text should not be smaller than 0.08” on a full size sheet, and should be a font such at Simplex, Calibri, or Arial.

EXHIBIT D
CONSULTANT'S GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

I. CONSULTANT'S RESPONSIBILITY. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment(s) for services; however, this shall not be City's sole and exclusive remedy for said over-payment.

II. GUIDELINES FOR DIRECT EXPENSES.

A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall City reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of City's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by City. Toll road subscriptions or toll plaza receipts are not reimbursable. Consultant agrees to place these standards in all subcontracts for work on the Project.

B. **Supplies, Material, Equipment** – City shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by City's Project Manager in writing.

C. **Commercial Reproduction** – City shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to City at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

D. **In-House Reproduction** – Consultant shall make arrangements with City for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of City's reproduction log is required as

a prerequisite for payment, including the number or reproductions, the date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

E. **Commercial Plotting** – City shall reimburse the actual cost of plots, specifically limited to final documents, provided Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

F. **In-House Plotting** – Consultant shall make arrangements with City for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of City's reproduction log is required as a prerequisite for payment, including the number of plots, the date, time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.

G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.

H. **Postage, Mail, and Delivery Service** – City shall reimburse the actual cost of postage and delivery of Instruments of Service, provided Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for City, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of Consultant and/or Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.

I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with City's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

A. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to City specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to City what costs would be considered direct costs. City shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. City reserves the right to reject any and all requests for General and/or Administrative Markup.

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

A. **Requirement of Prior Approval** – City shall reimburse the actual cost of travel and/or subsistence expenses upon prior written approval by City's Project Manager.

B. **Adherence to Currently Adopted City Travel Policy** – Reimbursements shall be governed by the same travel policies provided for City employees according to current adopted policy. Prior to the event, Consultant shall request, and City's Project Manager shall provide the provisions and the restrictions that apply to out-of-town reimbursements.

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

I. GENERAL INSURANCE REQUIREMENTS –

A. All policies shall name the City of Sherman, its officers, agents, representatives and employees as additional insured as to all applicable coverage with the exception of workers compensation insurance and professional liability insurance.

B. Such policies shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail.

C. Such policies, except professional liability, shall provide for a waiver of subrogation against City for injuries, including death, property damage or any other loss to the extent the same is covered by the proceeds of the insurance.

II. INSURANCE COMPANY QUALIFICATION – All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas, and shall have a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

III. CERTIFICATE OF INSURANCE – A Certificate of Insurance and policy endorsement(s) evidencing the required insurance shall be submitted prior to execution of the Agreement. If the Agreement is renewed or extended by City, a Certificate of Insurance and policy endorsement(s) shall also be provided to City prior to the date the Agreement is renewed or extended.

IV. INSURANCE CHECKLIST – "X" means that the following coverage(s) is required for this Agreement.

		Coverage Required	Limits
_X_	1.	Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
_X_	2.	General Liability	▪ Minimum $1,000,000.00 each occurrence; ▪ Minimum $2,000,000.00 in the aggregate
___	3.	XCU Coverage	▪ Minimum $1,000,000.00 each occurrence; ▪ Minimum $2,000,000.00 in the aggregate

_X_	4.	Professional Liability	▪ Minimum $1,000,000.00 each claim; ▪ Minimum $2,000,000.00 in the aggregate
_X_	5.	Umbrella Coverage of Excess Liability Coverage	▪ An amount of $2,000,000.00 ▪ Minimum $2,000,000.00 in the aggregate

_X_ 6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.

_X_ 7. General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name the City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.

_X_ 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.

_X_ 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

_X_ 10. The Certificate of Insurance must state the project title and bid number.

___ 11. Other Insurance Requirements (State Below):

EXHIBIT E
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE — FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY
Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

_____
Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

_____ _____
Signature of vendor doing business with the governmental entity Date

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 1/1/2021

Gensler

December 9, 2022

Zachary Flores
Executive Director of Public Safety
City of Sherman
220 W. Mulberry St.
PO Box 1106
Sherman, Texas 75091-1106

Subject: **Agreement for Architectural Services R2**
For Gensler
Sherman City Hall and Master Plan—Phase I
Gensler Project Number 096.3373.000

Dear Zachary:

This Agreement is between City of Sherman, Texas ("Client") and M. Arthur Gensler Jr. & Associates, Inc. ("Gensler"), located at 5005 Greenville Avenue, Dallas, Texas 75206, for architectural services.

A. PROJECT

A.1 Project Description. The project includes the programming, concept design, and 25% Schematic Plans for a new city hall at 220 West Mulberry Street, Sherman, Texas 75090 (the "Project"). It is anticipated that the design of this facility will be done in two phases. Phase I will include initial programming and concept design in order to firmly understand potential budget commitments, size of the city hall, and appropriateness of site use. Phase II services are intended to include a full Schematic Design, Design Development, Bid Assistance, and Construction Administration for enhanced services and basic services, and shall include master planning, branding and graphics, and furniture, fixtures and equipment (FF&E).

A.2 Project Budget. Client will provide and Gensler will review Client's overall project and construction budget goals for the Project (the "Project Budget") prior to the commencement of services. The Project Budget will include appropriate amounts for design and construction contingencies, consistent with the nature of the Project. During design, Client's designated representative (Construction Manager at Risk (CMaR) will provide Gensler estimates of the Construction Cost five (5) business days prior to the conclusion of a design phase if specified in Section B.1 below, including contingency amounts commensurate with the stage of design evolution and the nature of the Project. Client and Gensler will review such cost estimates and Client will adjust it to reflect changes in the program requirements, design, and level of design detail, or adjust the program, to the extent required for consistency with the Project Budget, over a ten (10) business day period. Unless it would otherwise be an Optional/Additional Service (as defined in Section B.3 below). Gensler will incorporate any agreed upon changes in the subsequent design phase as part of its Basic Services (as defined in Section B.1 below).

Gensler

A.3 Project Schedule. The project schedule of important milestones ("Schedule") is set forth below or in a schedule exhibit included in this Agreement. The Project will proceed in accordance with the Schedule. The parties will monitor the Project for conformance with the Schedule. If Client directs Gensler to provide Additional Services requiring additional time or the Project is not proceeding in accordance with the Schedule due to factors beyond Gensler's reasonable control, Gensler and Client will adjust the Schedule as appropriate, consistent with Section B.3, Optional/Additional Services. The Schedule will consist of the following presently projected milestones:

a)	Commencement of Basic Services	To be determined
b)	Strategy and Concept Design	7 weeks from a
c)	Submission of 25% Schematic Design Site and Building Plans	4 weeks from b
d)	CMaR Estimate and Owner Review SD	2 weeks from c
e)	Approval of Initial Programming and Budget	1 week from d

B. SCOPE OF SERVICES PROVIDED BY GENSLER

Client and Gensler will each provide the names of their key Project team members, including the primary contact person and the person authorized to make decisions. Meetings and Site Visits may be conducted by telephonic, videoconference, or other remote means if approved in advance by Client.

B.1 Gensler's Basic Services

Gensler's Basic Services include design services for the shell and core; interiors, including the main lobby, council chambers, public corridors, and rest rooms.

Unless Gensler and Client expressly agree otherwise, Gensler's Basic Services only include services with respect to improvements within Client's real estate designated for the Project.

Gensler's fee for Basic Services is based upon (among other things) the information in Section A, including the Project Budget and Schedule, and the scope of services in Section B. Changes in Project Budget, Schedule, or scope may result in Additional Services, consistent with Section B.3.

Gensler shall design to the following current codes at the City of Sherman, Texas:

- 2018 ICC Building Code;
- 2018 International Plumbing Code;
- 2018 International Mechanical Code;
- 2018 internal Fire Code;
- 2020 National Electric Code;
- 2018 Com Check Energy Code Compliance Report.

Gensler

Gensler may engage sub-consultants to provide design services for the following building systems or components: mechanical, electrical, plumbing, civil engineering, structural engineering, audio visual, technology, and landscape architecture if requested by Client. Currently, these Phase I services do not include any sub consultants.

Client will engage separate consultants to provide the following design services, if required for the Project: cost estimating, hazardous material and abatement services, materials testing. Gensler will provide backgrounds of Gensler's drawings to Client's consultants, showing the locations of architectural design elements that influence the layout of engineering and other systems.

B.1.1 Phase One - Pre-Design

B.1.1.1 Project Start-up/Kickoff. Upon Client's authorization to proceed, key representatives of Client, Gensler, and appropriate consultants will meet to kick off the Project. The purpose of the meeting is to establish the parties' mutual understanding of the Project objectives, schedule, budget, and delivery process. The agenda may include the following:

a. Introduction of key team members, including each party's primary contact and the person authorized to make decisions;
b. Discussion of Project performance targets;
c. Discussion of Schedule milestones, including process and durations for Client's review and approval;
d. Discussion of programming information to be provided by Client and Client's process for providing such information;
e. Discussion of the process for refining the Project Budget and providing cost estimates prior to the conclusion of the phases identified below;
f. Review and discussion of existing site conditions;
g. Development of a BIM Execution Plan, if required for the Project;
h. Discussion of communication protocols;
i. Identification of key personnel and protocols for invoicing and payment.

During each phase of the project, Gensler will attend project meetings with Client to review Project design status as specified below with respect to each phase.

B.1.1.2 Client-Provided Programming Information. Client will provide and Gensler will review requested programming information (together with the Project description in this Agreement, the "Program"), which will include the following parameters:

a. Site requirements;
b. Space requirements, functional relationships, and adjacencies;
c. Technology requirements;
d. Infrastructure requirements, including after-hours use, HVAC, and special security;
e. Other applicable guidelines, policies, and procedures that may affect Project design.

Gensler

If Client's programming information is incomplete or requires investigation or correction, Client will provide further information upon Gensler's reasonable request. To assist Client in providing adequate information, Gensler may recommend meetings, interviews, or other services as Additional Services.

B.1.1.3 Data Collection. Client understands and agrees that Gensler may gather statistical data, analytics, trends and other aggregated or otherwise de-identified data derived from Gensler's services to Client ("Aggregate Data"), and that Aggregate Data will be stored and processed by Gensler for general research purposes. Aggregate Data, as well as any resulting research, know-how, processes, algorithms or other methodology related to the Aggregate Data, shall remain Gensler's property and will be considered Confidential Information under the Standard Terms and Conditions attached to this Agreement.

B.1.1.4 Master Site Planning. N/A

B.1.1.5 Existing Site Conditions. Gensler will review record documentation provided by Client of the existing site conditions, including: topographical surveys, geotechnical reports, and adjacent master planning reports. Gensler will visit the Project site to verify reasonably observable conditions, including: site access, views, adjacent context connections (i.e. library, other municipal buildings). If required, and approved by Client, Gensler may provide Additional Services to measure portions of the Project solely for the purpose of verifying certain conditions. Under certain circumstances, e.g., if the documentation of existing conditions is unavailable or appears to be unreliable, Gensler may recommend that Client engage the services of a surveyor to document the existing conditions before Gensler can proceed with further design services. Client acknowledges that demolition can reveal pre-existing, hidden conditions, which may require Additional Services and/or modifications to the Program, Project Budget, and/or Project Schedule.

B.1.1.6 Design Discovery. Gensler will coordinate collaborative design discovery meetings, focus groups, interviews, visioning sessions, and/or charettes with key Client representatives required to make design decisions (including consultants). The meetings will be limited as set forth below and may include the following objectives:

a) Downtown Sherman City Hall Visioning Workshop: Gensler will lead one Workshop session with City of Sherman officials/Core Team/Relevant Stakeholders, focused on identifying a Strategic Vision and Guiding Principles for future City Hall building.
    (1) The schedule for this is portion of scope is recommended for a total of 7 weeks
        (a) 3 weeks for Kickoff and preparation
        (b) 1 week to conduct the Workshop (location and format TBD)
        (c) 1 Week for synthesis and report creation
        (d) 1 week to report out to core team and relevant stakeholders
        (e) 1 week for follow up and minor adjustments.
    (2) The outputs from this process will inform a more tailored approach moving forward, potentially including but not limited to: high-level plan and masterplan

Gensler

recommendations, future stakeholder engagements, building programming, or change management.

TASK 1: VISIONING & DISCOVERY WORKSHOP
Gensler will facilitate one (1), 2-hour interactive Visioning & Discovery Workshop with stakeholders to understand opportunities, priorities, and metrics for success for the future City Hall. We will work with a core team to identify high-level topics that will give insight to your specific goals and ambitions. Topics may include, but are not limited to:

- the type of experience desired for City Officials, Staff, and other employees
- type of experience desired for the Public and how citizens interact with City services and assets
- the City Hall as a Public Engagement Hub and Community Center
- Priorities around Diversity, Equity, Inclusion, and Representation.
- Hybrid / Virtual Working Environments
- Emerging Collaborative Space Typologies

Gensler will work with a core team to identify attendees for this Workshop, which is recommended not to exceed 24 participants. The Client will be responsible for contacting and soliciting participation from this list, with Gensler providing text and communication to assist. In developing the topics and activities for the Workshop, Gensler will work with the core team to verify topics to be included in activities, as well as understand potential discussion challenges or controversial topics.

Workshop facilitation will be in-person. Gensler will design activities to maximize participant engagement.

Following facilitation of the Workshop, Gensler will synthesize a Workshop report, based on comments and activities, and include a strategic Vision and Guiding Principles. This report will also identify opportunities and recommendations for future project development. Gensler will provide one (1) read-out session to present the report to the core team and relevant stakeholders and provide opportunity for question and answer before final issuance.

<u>Deliverables</u>
Workshop Report, to include:

- Themes + Insights from Workshop activities
- Strategic Vision and Guiding Principles
- Opportunities + Recommendations around future development and needs
- Strategy Roadmap, which includes a framework to define continued scope moving forward

b) *Program Review/Adjustment*. Up to Six meetings to review the Program, test fits, Project site, existing conditions, Project Budget and Project Schedule, and obtain Client's direction regarding any adjustments to the Program and any other Project parameters.

Gensler

Gensler will prepare minutes documenting any Program adjustments, design decisions, and issues which the parties may agree to address at a later stage. Gensler will issue such minutes to the Client for review and approval. Client may request or Gensler may recommend further or separate design discovery meetings or other services as Additional Services.

B. 1.2 Phase Two - Design

B.1.2.1 Phase Two services will commence when Client has confirmed the Program and other initial information established in Phase One and directed Gensler to proceed accordingly.

B.1.2.2 Conceptual Design. Gensler will develop and initiate the Conceptual Design, consisting of a Project design concept, including rough sketches and other perspectives sufficient to provide Client a preliminary perspective regarding the Project's general layout and aesthetic. The Conceptual Design will not include design detail to be developed in Schematic Design or later phases.

Gensler will provide the Conceptual Design Documents in PDF, including a package for Client's CMaR to prepare an initial cost estimate, which will be provided to Gensler. Gensler will meet with Client up to three (3) times during this phase to present and review the material, including any cost estimate prepared by Client's cost estimator or general contractor. Client and Gensler will agree upon any reasonable changes, consistent with the Program, and Gensler will incorporate such changes in the Schematic Design phase, unless the changes would otherwise be an Optional/Additional Service (as defined in Section B.3 below). Meetings in this phase will include up to two Gensler personnel for up to four hours.

B.1.2.3 25%Schematic Design. Gensler will initiate and develop the 25% Schematic Design, consisting of:

a. Preliminary project description;
b. Site plan;
c. Schematic floor plans;
e. Building elevations;

The purpose of a 25% Schematic Design Phase and deliverable is twofold:

1. To allow CMaR to have drawings and narratives to estimate costs;
2. To allow the City of Sherman to review initial layouts for future iterations in Phase II services.

Gensler will provide the Schematic Design Documents in PDF, including a package for Client's CMaR to prepare an initial or updated cost estimate, which will be provided to Gensler. Gensler will meet with Client up to eight times during this phase to present and review the material, including the cost estimate prepared by Client's cost estimator or general contractor. Client and Gensler will agree upon any reasonable changes, consistent with the Program, and Gensler will incorporate such changes in the final SD phase, unless the changes would otherwise be an Optional/Additional Service (as defined in Section B.3 below). Meetings in this phase will include up to Four Gensler personnel for up to two hours.

Gensler

B.1.2.3.1 Site Plan Approval. N/A

B.1.2.4 Design Development. N/A

B.1.2.5 Product Design. N/A

B.1.2.6 Construction Documents. N/A

B.3 Optional/Additional Services. Gensler will provide services beyond the Basic Services described in Section B.1 ("Additional Services") if requested by Client and confirmed in writing by Gensler. Additional Services include, but are not limited to:

a. Services required due to accelerated deadlines, delays, untimely Client information, approvals, or instructions, out-of-sequence phasing, Project pauses or remobilization, or other schedule changes due to reasons beyond Gensler's reasonable control;
b. Services required due to changes in: (i) the Program; (ii) previously provided Client information, approvals, or instructions; or (iii) federal, state, or local laws, or regulations (or their interpretation by the authority having jurisdiction);
c. Value engineering services required due to (i) absence of Project Budget at the commencement of Services; (ii) Project Budget changes after the Programming phase; (iii) new value engineering instructions after commencement of the Construction Documents phase; or (iv) inaccurate cost estimates;
d. Changes to Construction Documents based on alternative, fast track, separate, or sequential bids, phasing, and swing space; and
e. Services required due to performance failures by Client and Client's consultants/contractors

B.4 Excluded Services. In addition to any services not specifically listed in this Exhibit A, Exhibit B, Exhibit C, and Exhibit D, the following services are excluded:

a) 100% Schematic Design;
b) Design Development Phase;
c) Bidding Phase;
d) Construction Document Phase;
e) Construction Administration;
f) Cost Estimating;
g) Hazardous materials testing or abatement;
h) Interior landscaping;
i) Design services after Design Development Phase Approval;
j) Payment or estimation of permitting costs;
k) Photo realistic renderings or physical models;
l) LEED and/or WELL Certification services;
m) Rain water harvesting systems;

Gensler

n) Solar energy systems (This service may be provided as an Alternate Service as it is defined during the project);
o) Wind generation systems;
p) Grease traps;
q) Food service programming and questionnaires;
r) Technology, AV, IT, Security, Acoustic related benchmarking tours of off-site facilities;
s) Water feature, water fountain design services;
t) Site restoration plans;
u) Geotechnical Engineering and Materials Testing;
v) Design of tornado shelters or safe rooms;
w) Traffic studies, traffic impact analysis;
x) Underground fuel storage tank services;
y) Preparation of a Storm Water Pollution Prevention Plan (SWPPP)
z) Stream hydrologic and hydraulic studies with computations for analyzing and determination of flood plains and channel improvements;
aa) Storm water detention design or analysis;
bb) Structural Engineer design basis for bearing of ground floor as soil-supported slab on grade – Shall future reports by Owner provided Geotechnical Engineer require a structured solution, the Structural Engineer of Record shall submit fees for this additional work;
cc) Review of shop and erection drawings of materials used in construction means and methods such as formwork, shoring and bracing;
dd) Development of the Revit model beyond AIA E202 LOD 300;
ee) Preparation of Record drawings and/or models from the Contractor's as-built set markup, at the end of the construction phase;
ff) Preparation of the Stormwater Pollution Prevention Plan. This shall be used by the contractor, and his erosion control inspector, to maintain compliance with City of Sherman, EPA, and TCEQ requirements;
gg) Public art;
hh) Changes to layouts, designs, finishes, site plan after Design Development Phase;
ii) Distributed Antenna Systems (DAS) consultation and design;

C. SERVICES AND INFORMATION PROVIDED BY CLIENT

C.1 Services Provided By Client or Others. The following services may be required on the Project and will be provided by Client, Client's consultants or contractors, or others:

a. Consulting services, including: geotechnical, hazardous materials testing or abatement, cost estimating, traffic, electronic/computer equipment;
b. Design-build or Design Assist services.

C.2 Information Provided By Client or Others. The following information may be required on the Project and will be provided by Client, Client's consultants or contractors, or others:

Gensler

a. Legal description of the property; the name/address of the property owner; and the name/address of any construction lender(s);
b. Existing or Base Building information, including drawings, specifications, and other documents that describe the existing utility services, site conditions, build out and base building construction, and any systems with which the Project is to be coordinated;
c. Structural, mechanical, chemical, air, and water pollution and hazardous materials tests, and other laboratory and environmental tests, inspections, and reports required by law or by authorities having jurisdiction over the Project, or reasonably requested by Gensler.

C.3 Client's Requirements of Contractor. Client will, through the Construction Contract, require Contractor to:

a. Provide access to the Work;
b. Provide a Submittal Schedule for Gensler's approval and provide required Submittals in accordance with the Schedule;
c. Review Submittals, identifying any changes, and approve before submitting to Gensler. Submittals shall be scope approved by Client in GMP sent to Design Team for incorporation into Construction Documents;
d. Be responsible for the technical adequacy and accuracy, installation, and performance of any Project elements for which Gensler may specify performance requirements;
e. Follow proper procedures for requests for substitutions;
f. Maintain logs of all documents issued to and received from all other parties;
g. Provide required certificates or statements of performance characteristics;
h. Complete punch list items within thirty (30) days of Substantial Completion;
i. Provide to Client as-constructed record drawings, maintenance manuals, written warranties, and related documents within thirty (30) days of Substantial Completion;
j. Maintain job site safety on the Project;
k. Cause Gensler and Gensler's consultants to be named as Additional Insureds on any property insurance purchased for the period of construction of the Project and on Contractor's General Liability Policy (using form CG 2026, CG 2032, or equivalent); such insurance will be endorsed to provide a waiver of the insurers' rights of subrogation against Gensler and Gensler's consultants.

Gensler

D. COMPENSATION

Compensation to Gensler for Basic Services, Additional Services, and Reimbursable Expenses will be as described below. When Gensler's compensation is based on hourly rates, the rates will be those set forth in Gensler's Standard Hourly Billing Rates.

D.1 Basic Services. Compensation for Basic Services will be the lump sum of One-Hundred, Thirty Seven-Thousand, Four-Hundred dollars ($137,400.00).

Downtown Sherman City Hall and Masterplan Visioning Workshop	$40,000.00
Concept Design	$36,000.00
25% Schematic Design, Bid Support, Final 25% Deliverable	$61,400.00

D.2 Additional Services. Compensation for Additional Services (if not agreed upon as a lump sum amount) will be based on Gensler's Standard Hourly Billing Rates.

D.3 Reimbursable Expenses. Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by Gensler and Gensler's consultants in the interest of the Project, including, but not limited to the following:

a. Reproduction, shipping, handling, and delivery.
b. Mileage, tolls, cab fares, and parking.
c. Renderings, models, mock-ups, and photography.
d. Sales taxes and other transactional taxes, and fees paid for securing approval of authorities having jurisdiction over the Project.
e. Authorized out-of-town travel, including travel time and reasonable living expenses.
f. Additional insurance coverage or limits requested by Client in excess of that normally provided by Gensler and Gensler's consultants.

Compensation for Reimbursable Expenses incurred by Gensler in connection with the Project, including without limitation, reproduction costs for providing copies of the deliverables described in Section B.1, will be based on amounts invoiced to Gensler, plus fifteen percent (15%).

D.4 Consultants. If Client has directed Gensler to engage consultants in Section B.1, compensation for such consultants will be based on amounts invoiced to Gensler, plus fifteen percent (15%), to compensate Gensler for costs commonly incurred relating to consultant liability, management of consultants' services, and administration of consultants' contracts.

D.5 Progress Payments. Progress payments will be made monthly. Where Gensler's fee is based on a lump sum, progress payments for Basic Services will be based on the percentage of services provided during the previous month.

Gensler

By Gensler	By Client
Barry Hand	
	(Printed Name of Signatory)
By	By
(Signature)	(Signature)
Principal,	
(Title) (Date)	(Title) (Date)

STATEMENT OF JURISDICTION. The Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337 or 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, (512) 305-9000, has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas.

cc: Project File
Accounting File

R011110-10 Architectural Fees

Tabulated below are typical percentage fees by project size, for good professional architectural service. Fees may vary from those listed depending upon degree of design difficulty and economic conditions in any particular area.

Rates can be interpolated horizontally and vertically. Various portions of the same project requiring different rates should be adjusted proportionately. For alterations, add 50% to the fee for the first $500,000 of project cost and add 25% to the fee for project cost over $500,000.

Architectural fees tabulated below include Structural, Mechanical and Electrical Engineering Fees. They do not include the fees for special consultants such as kitchen planning, security, acoustical, interior design, etc.

Civil Engineering fees are included in the Architectural fee for project sites requiring minimal design such as city sites. However, separate Civil Engineering fees must be added when utility connections require design, drainage calculations are needed, stepped foundations are required, or provisions are required to protect adjacent wetlands.

Building Types	Total Project Size in Thousands of Dollars						
	100	250	500	1,000	5,000	10,000	50,000
Factories, garages, warehouses, repetitive housing	9.0%	8.0%	7.0%	6.2%	5.3%	4.9%	4.5%
Apartments, banks, schools, libraries, offices, municipal buildings	12.2	12.3	9.2	8.0	7.0	6.6	6.2
Churches, hospitals, homes, laboratories, museums, research	15.0	13.6	12.7	11.9	9.5	8.8	8.0
Memorials, monumental work, decorative furnishings	—	16.0	14.5	13.1	10.0	9.0	8.3

dlagrone H:\ENGINEERIGIS\ArcGIS Pro Projects\Planning\Public Notification.aprx

1/11/2023

Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Development Services Department

CITY OF SHERMAN

220 W Mulberry St (City Hall)

N
W E
S

Date: 1/11/2023 9:49 AM

Scale: 1:2,400

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 3.**

Meeting Date: 01/17/2023

Prepared By: Zachary Flores, Executive Director of Public Safety

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7015

Authorizing Execution of an Interlocal Memorandum of Understanding between the City of Sherman and Grayson County Sheriff's Office to Establish Guidelines Regarding the Housing and Handling of those Persons Incarcerated in the Grayson County Jail for the City of Sherman Class "C" Charges only

Issue:

To consider authorization of an Interlocal Memorandum of Understanding between the City of Sherman and the Grayson County Sheriff's Office to establish guidelines regarding the housing and handling of those persons incarcerated in the Grayson County Jail for the City of Sherman Class C Charges only

Background:

The City of Sherman contracts with Grayson County to house the City's class C misdemeanor arrests. This is beneficial as the City does not have to staff and operate a jail.

Origination:

City of Sherman
Grayson County Sheriff's Office

Financial Consideration:

This item is budgeted annually within the police department's line-item budget. It is estimated that this will cost the City less than $10,000 annually.

Staff Recommendation:

Staff recommends approval of this item.

Alternatives:

As may be directed by the Sherman City Council.

Attachments

Resolution No. 7015
MOU

RESOLUTION NO. 7015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN INTERLOCAL MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SHERMAN AND THE GRAYSON COUNTY SHERIFF'S OFFICE TO ESTABLISH GUIDELINES REGARDING THE HOUSING AND HANDLING OF THOSE PERSONS INCARCERATED IN THE GRAYSON COUNTY JAIL FOR THE CITY OF SHERMAN CLASS "C" CHARGES ONLY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City of Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an Interlocal Memorandum of Understanding with Grayson County, to establish guideline regarding the housing and handling of those persons incarcerated in the Grayson County Jail for the City of Sherman Class "C" Charges only, in accordance with the terms and provisions of all contract documents attached hereto and made a part hereof for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 17th day of January 2023.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____ **BY:** _____
LINDA ASHBY, CITY CLERK **DAVID PLYER, MAYOR**

APPROVED AS TO FORM
AND CONTENT:
ABERNATHY, ROEDER, BOYD, & HULLET P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Office of the Sheriff
Grayson County, Texas

TOM WATT
Sheriff

200 SOUTH CROCKETT STREET
SHERMAN, TEXAS 75090
(903) 893-4388 • FAX (903) 870-9074

Memorandum of Understanding

This Memorandum of Understanding ("Agreement") is entered into by and between the City of Sherman, a home-rule municipality of the State of Texas ("City"), and Grayson County, a political subdivision of the State of Texas ("County").

Recitals

1. The County operates the Grayson County Jail in accordance with Chapter 351 of the Texas Local Government Code.

2. The County operates the County Jail for the confinement of persons accused or convicted of an offense.

3. The City desires to obtain certain jail services from the County to be performed for the City to ensure the confinement of persons accused or convicted of an offense.

4. The parties agree that the provision of jail services is a governmental function that serves the public health, safety and welfare and is of mutual concern to the parties.

NOW, THEREFORE, in consideration of the foregoing and on the terms and conditions hereinafter set forth, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the authority granted by the Interlocal Cooperation Act, Texas Government Code Chapter 791, the parties agree as follows:

Article 1. Definitions.

Section 1.1 **TCJS** – shall mean the Texas Commission on Jail Standards.

Section 1.2 **MJS** – shall mean the Minimum Jail Standards as published and enforced by the TCJS.

Section 1.3 **Jail Services** – shall mean housing; feeding; clothing; routine, in-house, non-prescription medical care; and supervision of City prisoners in accordance with the MJS.

Section 1.4 **Additional Services** – shall mean those additional operation and management services required to be furnished by County pursuant to changes in TCJS policies from those in effect as of the Effective Date of this Agreement. These changes are required by changes in MJS, laws, government regulations, or court orders generally applicable to the Facility and which increase the cost of operation and management of the Facility.

Section 1.5 **Facility** – shall mean the Grayson County Jail located in Sherman, Texas.

Section 1.6 **City Prisoner** – shall mean all prisoners presented to the Facility by City, or other agency based on a City warrant or arrest without warrant, for incarceration in which the prisoner is charged with an offense within the subject matter jurisdiction of the Sherman Municipal Court.

Section 1.7 **Effective Date** – shall mean the date this Agreement is signed by the last party to sign it, as indicated by the date associated with that party's signature below.

Article 2. Term; Termination.

The term of this Agreement shall begin on the Effective Date of this Agreement and end on September 30, 2023, unless terminated earlier by a party in accordance with the terms of this Agreement. The term of this Agreement shall be automatically extended for successive terms of one (1) year each on the same terms and conditions of this Agreement unless one party provides written notice of non-extension to the other party at least thirty (30) days prior to the expiration of the then-current term. Notwithstanding any statement to the contrary in this Agreement, ether party may terminate this Agreement at any time and for any reason by giving the other party at least sixty (60) days prior written notice thereof.

Article 3. Services Provided.

Section 3.1 **Services Generally**. The County agrees to provide to City jail services necessary for the confinement of City Prisoners at the time the City requests jail services.

Section 3.2 **Custody of City Prisoners**. The County will provide space for at least 20 City prisoners but may decline to accept more City prisoners if the jail is at 95% of full legal capacity. County will not be obligated to accept City Prisoners if the Facility is destroyed or substantially damaged. County is not obligated to accept City prisoners injured or incapacitated to the extent that the County would not accept them as a non-City Prisoner under the policies and procedures of the Grayson County Jail.

Section 3.3 **Non-Exclusive**. The parties agree that the County may contract to perform services similar or identical to those specified in this Agreement for such additional governmental or public entitles as the County, in its sole discretion, sees fit. The City may place some or all of its prisoners in other jails.

Section 3.4 City shall conduct all book-in procedures. County shall retain and own the originals of all book-in records and paperwork.

Section 3.5 City Prisoners shall be permitted to participate in all County programs conducted within the facility including GED programs, Alcoholics Anonymous meetings, Narcotics Anonymous meetings,religious services,and vocational training.

Section 3.6 The City shall be solely in charge of all control, techniques, sequences, procedures and means and the coordination of all work performed under the terms of this Agreement regarding the function and duties of the City Jail Liaison Officer, however, said officer shall be required to perform the following duties:

a. Provide County with a mittimus or other commitment orders within 24 hours after the arrest of a City Prisoner.
b. Provide the County with fully completed and written arrest reports at book-in.
c. Prepare prisoner transfer forms.
d. Obtain medical clearance, if needed.
e. Provide transportation to and from Municipal Court.
f. Provide Facility with release date for City Prisoners.
g. Provide daily communication with the County concerning the status of City Prisoners.

Section 3.7 The City shall designate the Chief of Police or his designee to act on behalf of the City to serve as "City Jail Liaison Officer" for the City in coordinating jail services under this Agreement. The County shall designate the County Sheriff or his designee to act on behalf of the County as "County Jail Liaison Officer'' for the County in coordinating jail services under this Agreement.

Section 3.8 The County shall be solely in charge of all control, techniques, sequences, procedures and means and the coordination of all work performed under the terms of this Agreement regarding the function and duties of the County Jail Liaison Officer. Said officer shall assume the supervision and responsibility of all records and files maintained on City Prisoners during incarceration and shall notify the City Jail Liaison Officer immediately if any City Prisoner requires medical attention.

Section 3.9 **Prompt Magistration**. Every arrestee shall be brought before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested. Necessary forms establishing probable cause must be completed and filed. City Prisoners shall be considered to be in the custody of the County from and after book-in and until release.

Section 3.10 **Release**. Any City Prisoners held under this Agreement shall not be released before 10 o'clock am on the day of their release.

Article 4. Compensation.

Section 4.1 There will be a jail service charge of $65 per day for City Prisoners when that person has no other Federal, State, or local charges. The County shall bill the City monthly for jail services provided under this Agreement. The City agrees to pay such bills within 30 days of the billing date. Payments should be made to the Grayson County Treasurer, 100 W. Houston St., Suite A-2-2, Sherman, Texas 75090. The payments due to the County for jail services under this Agreement shall be automatically increased/decreased on October 1 of each new fiscal year by an amount equal to the percentage change of the National Consumer Price Index, Urban, for the prior 12 months of the calendar year, as published by the U.S. Bureau of Labor Statistics on its website, *bls.gov*. This rate includes any medical and/or mental health services that are needed while the inmate is in the custody of the Grayson County Jail. All inmates shall be treated and processed through the Grayson County Jail in accordance with all applicable standards and regulations promulgated by the Texas Commission on Jail Standards and other applicable state and federal laws, standards and regulations.

Section 4.2 There shall be no charges under this Agreement for persons arrested and housed in the Grayson County Jail on any City of Sherman Class "C" charges when that person is currently being held on other Federal, State, or local charges.

Section 4.3 Persons incarcerated for only City of Sherman Class "C" charges will be considered to be given credit for time served according to the following schedule:

a. $0-$499 = 1 day (minimum of 8 hours)
b. $500-$999 = 2 days
c. $1,000-$1,999 = 3 days
d. $2,000+ = The exact number of days will be determined at the time of book-in by GCSO personnel contacting the on-duty SPD supervisor, who will make a determination according to internal SPD guidelines and in compliance with Code of Criminal Procedure Article 45.048.

This MOU in no way affects jail time credit which may be awarded by the Judge having jurisdiction to any person charged with a City of Sherman Class "C" misdemeanor.

Article 5. Miscellaneous.

Section 5.1 **Liability.** Each party shall be responsible for its own negligent acts or omissions or other tortious conduct in the course of performance of this Agreement, without waiver of any sovereign immunity, governmental immunity or other defenses available to either party under federal or state law. All parties agree that any such liability or damages occurring during the performance of this Agreement caused by the joint or comparative negligence of the parties, or their agents, officers, or employees shall be determined in accordance with comparative responsibility laws

of the State of Texas. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.

Section 5.2 **Nondiscrimination**. No person will be subjected to discrimination in the performance of this Agreement on the grounds of handicap, race, color, religion, sex, age, national origin or other protected status under applicable law.

Section 5.3 **Binding Nature**. This Agreement shall not be binding upon the parties until approved by the respective governing bodies.

Section 5.4 **Severability**. In the event that any provision of this Agreement shall be held to be invalid, the provision shall be void, and the validity of the remaining provisions of the Agreement shall not in any way be affected.

Section 5.5 **Captions**. The headings to the various sections of this Agreement have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Agreement.

Section 5.6 **Choice of Law; Venue**. This Agreement shall be deemed to be made under, governed by, and construed in accordance with the laws of the State of Texas. Exclusive venue for any dispute or proceeding arising out of this Agreement shall be in the courts of Grayson County, Texas.

Section 5.7 **Amendment**. This Agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties to this Agreement.

Section 5.8 **Scope of Agreement**. This Agreement incorporates all of the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all covenants, agreements and understandings have been merged into this Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents regarding the subject matter of this Agreement shall be valid or enforceable unless embodied in this Agreement. The parties hereby agree to terminate and release that certain Interlocal Jail Services Agreement dated October 1, 2013, and that certain Memorandum of Understanding dated August 20, 2013.

Section 5.9 **Notices**. All notices shall be sent certified mall, return receipt requested to:

Grayson County Judge
100 W. Houston, Suite 15
Sherman, Texas 75090

City Manager
City of Sherman
220 W. Mulberry Street
Sherman, TX 75090

Section 5.10 **Authority**. By executing this Agreement, each party represents that it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement, and that this Agreement has been authorized by the governing body of the respective parties. In accordance with the Interlocal Cooperation Act, the parties agree that the party paying for the performance of governmental functions or services contemplated in this Agreement shall make those payments only from current revenues legally available to the paying party.

Section 5.11 **Immunity**. It is expressly understood and agreed that, in the execution and performance of this Agreement, the parties have not waived, nor shall be deemed hereby to have waived, any immunity, governmental, sovereign and/or official, or defense that would otherwise be available to them against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

Section 5.12 **No Partnership**. The parties do not intend that this Agreement be construed as creating a principal and agent relationship, partnership, joint venture or any association between the parties, it being understood and agreed that none of the provisions contained herein or any acts of the parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the parties other than the relationship of independent contractors. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it.

City Manager, City of Sherman Date: _____	Grayson County Judge Date: _____
Sherman PD Chief of Police Date: _____	Grayson County Sheriff Date: _____

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 4.**

Meeting Date: 01/17/2023

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7016

Determining a Public Necessity to Acquire by Eminent Domain a Sanitary Sewer Easement and Temporary Construction Easement for Public Use, Including the Construction, Expansion, Access, Repair and Maintenance of Public Wastewater Improvements, Consisting of Two Tracts of Land Comprising 0.054 acres (Sanitary Sewer Easement) and a 20-foot area on Both Sides of Said 0.054 acres for a Temporary Construction Easement owned by Susan M. Brannum According to Volume 5531, Page 816 of the Official Public Records of Grayson County, Texas, Within the Preston Kitchen Survey, Abstract No. 667, Grayson County, Texas, as Deemed Necessary by the City Manager or His Designee; Giving Notice of an Official Determination to Acquire the Sanitary Sewer Easement and Temporary Construction Easement for Public Use by Eminent Domain for Such Uses; Authorizing the City Manager of the City of Sherman, Texas, to Establish Procedures for Acquiring the Easements, Offering to Acquire the Ewasments, Voluntarily, from the Landowner Through the Making of Bona Fide Offers; Appropriating Funds; Providing for Repealing, Savings and Severability Clauses; and Providing for an Effective Date

Issue:

To consider granting authority to negotiate for property rights for public use, including the construction, expansion, access, repair and maintenance of public wastewater improvements, and to complete condemnation proceedings.

Background:

On February 3, 2020, City Council approved Resolution No. 6590 for the design of the Sherman First Street to Rosedale Sanitary Sewer Replacement Project. It is the intent of the City to acquire the necessary Sanitary Sewer Easement and Temporary Construction Easement for the purpose of, among other things, the construction, access, repair and maintenance of public wastewater. These easements are necessary for use in such purpose, and staff is requesting Council permission pursue purchase of these Easements using whatever legal means necessary.

City Council motion must be made as follows: **"I move that the City Council of the City of Sherman authorize the use of the power of eminent domain to acquire two tracts of land comprising of 0.054 acres and 20-foot area on either side of said 0.054 acres for Sanitary Sewer Easment and Temporary Construction Easement."**

Origination:
Engineering Department

Financial Consideration:
Easement acquisition costs, along with costs for appraisals, surveys, maps and photos.

Staff Recommendation:
Staff recommends approval.

Alternatives:
As may be directed by the Council.

Attachments

Resolution No. 7016
Location Map

RESOLUTION NO. 7016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DETERMINING A PUBLIC NECESSITY TO ACQUIRE BY EMINENT DOMAIN A SANITARY SEWER EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT FOR PUBLIC USE, INCLUDING THE CONSTRUCTION, EXPANSION, ACCESS, REPAIR AND MAINTENANCE OF PUBLIC WASTEWATER IMPROVEMENTS, CONSISTING OF TWO TRACTS OF LAND COMPRISING OF 0.054 ACRES (SANITARY SEWER EASEMENT) AND A 20-FOOT AREA ON BOTH SIDES OF SAID 0.054 ACRES FOR A TEMPORARY CONSTRUCTION EASEMENT OWNED BY SUSAN M. BRANNUM, ACCORDING TO VOLUME 5531, PAGE 816 OF THE OFFICIAL PUBLIC RECORDS OF GRAYSON COUNTY, TEXAS, WITHIN THE PRESTON KITCHENS SURVEY, ABSTRACT NO. 667, GRAYSON COUNTY, TEXAS, AS DEEMED NECESSARY BY THE CITY MANAGER OR HIS DESIGNEE; GIVING NOTICE OF AN OFFICIAL DETERMINATION TO ACQUIRE THE SANITARY SEWER EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT FOR PUBLIC USE BY EMINENT DOMAIN FOR SUCH USES; AUTHORIZING THE CITY MANAGER OF THE CITY OF SHERMAN, TEXAS, TO ESTABLISH PROCEDURES FOR ACQUIRING THE EASEMENTS, OFFERING TO ACQUIRE THE EASEMENTS, VOLUNTARILY, FROM THE LANDOWNER THROUGH THE MAKING OF BONA FIDE OFFERS; APPROPRIATING FUNDS; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Sherman, Texas ("City Council") finds that there is a public necessity for the acquisition, by eminent domain, of a Sanitary Sewer Easement and a Temporary Construction Easement, as described and depicted in Exhibit A, attached hereto and incorporated herein for all purposes (collectively, the "Easements"), as deemed necessary by the City Manager or his designee for the Project (hereinafter defined); and

WHEREAS, it is the intent of the City of Sherman, Texas ("Sherman") to acquire the necessary Easements for the purposes of, among other things, the construction, access, repair and maintenance of public wastewater, including the First Street to Rosedale Sanitary Sewer Replacement Project (collectively, the "Project"); and

WHEREAS, the City Council finds that the description of the Easements to be acquired by eminent domain for the Project complies with Chapter 2206 of the Texas Government Code, as amended ("Chapter 2206"), in that the same provides property owner(s) in and around the area reasonable notice that the owners' property may be subject to condemnation proceedings during the planning or construction of the Project; and

WHEREAS, the City Council finds that the Project is necessary for public use; and

WHEREAS, it is necessary to establish procedures for determining the establishment and approval of just compensation for the Easements to be acquired by eminent domain for the Project; and

WHEREAS, the City Manager, or his designee ("City Manager"), is authorized to make a bona fide offer, as defined by and in compliance with Section 21.0113 of the Texas Property Code ("Bona Fide Offer"), to acquire the Easements for public use, voluntarily, from the subject landowner prior to moving forward with acquisition by eminent domain; and

WHEREAS, the City Council has investigated and determined that the passage of this Resolution complies with Chapter 2206 and other applicable laws.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Resolution as if fully set forth herein.

SECTION 2: Acquisition of Easements. The City Council hereby determines that there is a public necessity for, and the public welfare and convenience will be served by, the acquisition, by eminent domain, of the Easements, and it is Sherman's intent to acquire the Easements for public use as described and depicted herein, specifically for the purpose of, among other things, the construction, access, repair and maintenance of public wastewater improvements necessary for the Project.

SECTION 3: Authority of City Manager/Bona Fide Offer. The City Manager is hereby authorized to contract, on behalf of the City Council, with professional appraisers for appraisal services and with attorneys for preparation of title opinion(s) needed by Sherman from time to time in connection with the acquisition of the Easements. The City Council hereby ratifies any contracts entered into, prior to the effective date of this Resolution, by the City Manager with professional appraisers for appraisal services and with attorneys for preparation of title opinion(s) needed for the acquisition of the Easements. The City Manager shall first make a Bona Fide Offer to acquire the Easements from the subject landowner, voluntarily. Should the landowner fail to provide the Easements, voluntarily, through said Bona Fide Offer, the City Manager is authorized to move forward with acquiring the Easements by eminent domain.

SECTION 4: Determination of Just Compensation. The City Manager is hereby authorized and directed to examine and rely on independent appraisal reports and other information to make a determination as to the establishment and approval of a fair market value offer and the just compensation for the Easements for the purpose of making the Bona Fide Offer. After such consideration, the City Manager shall establish and approve the amount determined to be just compensation for acquisition of said Easements and shall have the authority to execute any and all documents necessary to complete the acquisition of same.

SECTION 5: Authority to Make an Offer. Upon establishment and approval by the City Manager of the amount of just compensation for the acquisition of the Easements, the City Manager is authorized to send a written Bona Fide Offer to the landowner of said Easement Property at the full amount determined and established to be just compensation therefore, and to negotiate with said landowner(s) on behalf of Sherman to acquire the Easements voluntarily.

SECTION 6: Authority to Execute Documents. The City Manager is hereby authorized to execute all documents necessary to acquire the Easements needed for the Project, on behalf of Sherman, whether by purchase or eminent domain. The City Council hereby ratifies any documents executed, prior to the effective date of this Resolution, by the City Manager which were necessary for the acquisition of the Easements for the Project.

SECTION 7: Disposal of Improvements. The City Manager is hereby authorized to remove improvements, if any, located on the Easement Property acquired in connection with this Project, should they interfere with the intended use and enjoyment of said Easements.

SECTION 8: Eminent Domain Authorized. Should the City Manager be unable to acquire the Easements, voluntarily, from the landowner(s), through the making of the Bona Fide Offer, the City Manager is authorized to instruct the law firm of Abernathy, Roeder, Boyd & Hullett, P.C., to commence eminent domain proceedings for the acquisition of the Easements for the Project.

SECTION 9: Source of Funds. The amount to be paid, if any, for acquiring the Easements for the Project will be appropriated from any lawful source.

SECTION 10: Savings/Repealing. All provisions of any resolution in conflict with this Resolution are hereby repealed to the extent they are in conflict. Any remaining portion of conflicting resolutions shall remain in full force and effect.

SECTION 11: Severability. Should any section, subsection, sentence, clause or phrase of this Resolution be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Resolution shall remain in full force and effect. The City Council hereby declares that it would have passed this Resolution, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

SECTION 12: Public Notice. The City Council finds that the meeting at which this Resolution was introduced and passed was open to the public and that public notice of the time, place and purpose of said meeting was given all as required by law.

SECTION 13: Effective Date. This Resolution shall take effect immediately from and after its passage.

INTRODUCED on this the 17th day of January 2023.

ADOPTED on this the 17th day of January 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM:
LAW FIRM OF ABERNATHY,
ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Exhibit A

EXHIBIT A
PERMANENT SANITARY SEWER EASEMENT
TEMPORARY CONSTRUCTION EASEMENT
SUSAN M. BRANNUM

PERMANENT SANITARY SEWER EASEMENT

Being a 0.054 acre tract of land, situated in the Preston Kitchens Survey, Abstract No. 667 and being a portion of a 2.00 acre tract as conveyed to Susan M. Brannum, recorded in Volume 5531, Page 816 of the Real Property Records of Grayson County, Texas (RPRGCT) and being more particularly described by metes and bounds as follows:

COMMENCING at a concrete monument found at the Northwest corner of said Brannum tract;

THENCE North 74°04'56" East with the Northwest line of said Brannum tract, said line also being the common line of a 43.90 acre tract as conveyed to Equity Trust Co, recorded in Instrument Number 2019-27181 of the RPRGCT, a distance of 285.03 feet to the **POINT OF BEGINNING,** said point being in said adjoining line of said Brannum tract and said Equity Trust Co. tract;

THENCE FROM THE POINT OF BEGINNING North 74°04'56" East with said common line of said Brannum and Equity Trust Co. tracts, a distance of 20.04 feet to a point for corner;

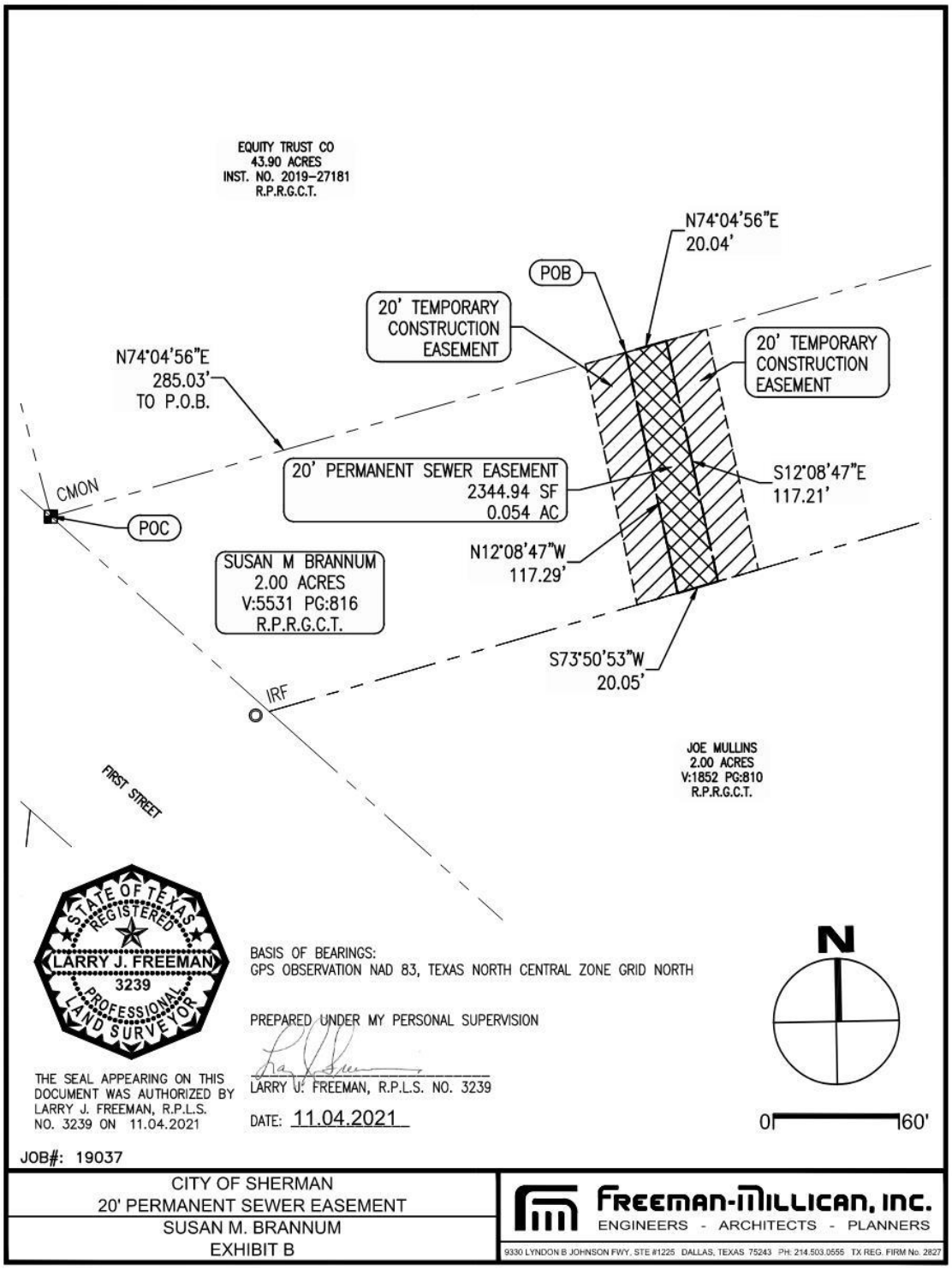
THENCE South 12°08'47" East, a distance of 117.21 feet to a point for corner, said point being in the adjoining line of said Brannum tract and a 2.00 acre tract as conveyed to Joe Mullins, recorded in Volume 1852, Page 810 of the RPRGCT ;

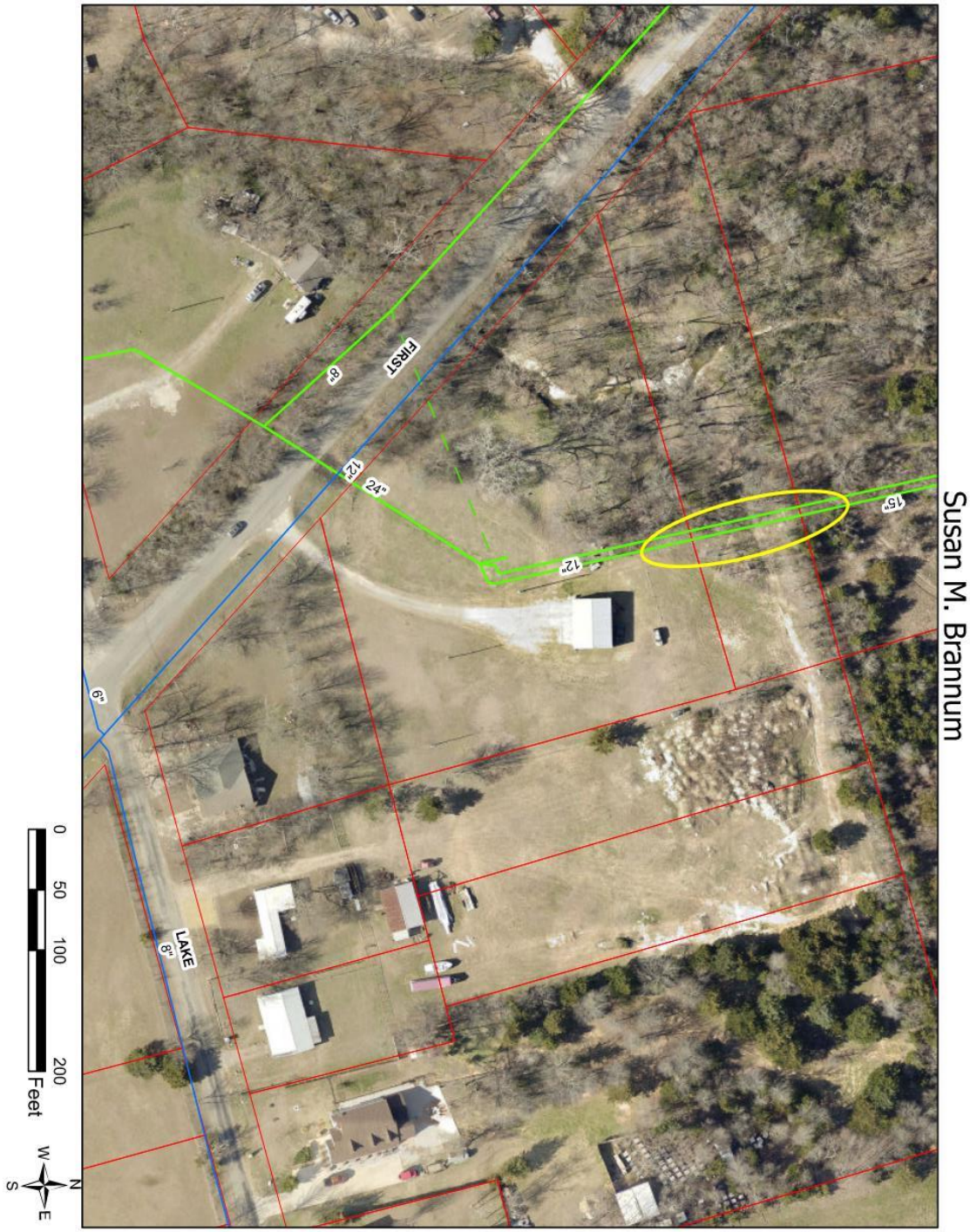
THENCE South 73°50'53" West with said adjoining line of said Brannum and Mullins tracts, a distance of 20.05 feet to a point for corner;

THENCE North 12°08'47" West, a distance of 117.29 feet to the **POINT OF BEGINNING** and containing 0.054 acres (2,344.94 square feet) more or less.

TEMPORARY CONSTRUCTION EASEMENT

Two 20-foot width temporary construction easements as shown on Exhibit B is hereby granted for the use by the Grantees' representatives during the construction of this Sanitary Sewer Improvement. The temporary construction easement shall be valid for a period of two years from the date of this easement and shall be restored by the Grantees' representatives to the original condition upon completion of the project.


EQUITY TRUST CO
43.90 ACRES
INST. NO. 2019-27181
R.P.R.G.C.T.
N74°04'56"E
20.04'
POB
20' TEMPORARY CONSTRUCTION EASEMENT
20' TEMPORARY CONSTRUCTION EASEMENT
N74°04'56"E
285.03'
TO P.O.B.
20' PERMANENT SEWER EASEMENT
2344.94 SF
0.054 AC
S12°08'47"E
117.21'
CMON
POC
SUSAN M BRANNUM
2.00 ACRES
V:5531 PG:816
R.P.R.G.C.T.
N12°08'47"W
117.29'
S73°50'53"W
20.05'
IRF
JOE MULLINS
2.00 ACRES
V:1852 PG:810
R.P.R.G.C.T.
FIRST STREET
STATE OF TEXAS
REGISTERED
LARRY J. FREEMAN
3239
PROFESSIONAL
LAND SURVEYOR
THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY LARRY J. FREEMAN, R.P.L.S. NO. 3239 ON 11.04.2021
BASIS OF BEARINGS:
GPS OBSERVATION NAD 83, TEXAS NORTH CENTRAL ZONE GRID NORTH
PREPARED UNDER MY PERSONAL SUPERVISION
LARRY J. FREEMAN, R.P.L.S. NO. 3239
DATE: 11.04.2021
N
0
60'
JOB#: 19037
CITY OF SHERMAN
20' PERMANENT SEWER EASEMENT
SUSAN M. BRANNUM
EXHIBIT B
FREEMAN-MILLICAN, INC.
ENGINEERS - ARCHITECTS - PLANNERS
9330 LYNDON B JOHNSON FWY, STE #1225 DALLAS, TEXAS 75243 PH: 214.503.0555 TX REG. FIRM No. 2827


Susan M. Brannum
FIRST
8"
12"
24"
12"
15"
6"
LAKE
8"
0
50
100
200
Feet
W
N
S
E

Susan M. Brannum

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 5.**

Meeting Date: 01/17/2023

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7017

Determining a Public Necessity to Acquire by Eminent Domain a Sanitary Sewer Easement and Temporary Construction Easement for Public Use, Including the Construction, Expansion, Access, Repair and Maintenance of Public Wastewater Improvements, Consisting of Two Tracts of Land Comprising 1.693 acres (Temporary Construction Easement) and 1.359 acres (Sanitary Sewer Easement) owned by HMI-Sherman 592, LLC, According to Instrument Number 2022-28337 of the Official Public Records of Grayson County, Texas, Within the Sherod Dunman Survey, Abstract No. 329, and the Winifred Bailey Survey, Abstract No. 64, Grayson County, Texas, as Deemed Necessary by the City Manager or His Designee; Giving Notice of an Official Determination to Acquire the Sanitary Sewer Easement and Temporary Construction Easement for Public Use by Eminent Domain for Such Uses; Authorizing the City Manager of the City of Sherman, Texas, to Establish Procedures for Acquiring the Easements, Offering to Acquire the Easements, Voluntarily, from the Landowner Through the Making of Bona Fide Offers; Appropriating Funds; Providing for Repealing, Savings and Severability Clauses; and Providing for an Effective Date

Issue:

To consider granting authority to negotiate for property rights for public use, including the construction, expansion, access, repair and maintenance of public wastewater improvements, and to complete condemnation proceedings.

Background:

On January 19, 2021, City Council approved Resolution No. 6696 for the design of the South Side Industrial Sanitary Sewer Replacement Project. It is the intent of the City to acquire the necessary Sanitary Sewer Easement and Temporary Construction Easement for the purpose of, among other things, the construction, access, repair and maintenance of public wastewater. These easements are necessary for use in such purpose, and staff is requesting Council permission pursue purchase of these Easements using whatever legal means necessary.

City Council motion must be made as follows: **"I move that the City Council of the City of Sherman authorize the use of the power of eminent domain to acquire two tracts of land comprising of 1.693 acres and 1.359 acres for Sanitary Sewer Easment and Temporary Construction Easement."**

Origination:
Engineering Department

Financial Consideration:
Easement acquisition costs, along with costs for appraisals, surveys, maps and photos.

Staff Recommendation:
Staff recommends approval.

Alternatives:
As may be directed by the Council.

Attachments

Resolution No. 7017
Location Map

RESOLUTION NO. 7017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DETERMINING A PUBLIC NECESSITY TO ACQUIRE BY EMINENT DOMAIN A SANITARY SEWER EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT FOR PUBLIC USE, INCLUDING THE CONSTRUCTION, EXPANSION, ACCESS, REPAIR AND MAINTENANCE OF PUBLIC WASTEWATER IMPROVEMENTS, CONSISTING OF TWO TRACTS OF LAND COMPRISING 1.693 ACRES (TEMPORARY CONSTRUCTION EASEMENT) AND 1.359 ACRES (SANITARY SEWER EASEMENT) OWNED BY HMI-SHERMAN 592, LLC, ACCORDING TO INSTRUMENT NUMBER 2022-28337 OF THE OFFICIAL PUBLIC RECORDS OF GRAYSON COUNTY, TEXAS, WITHIN THE SHEROD DUNMAN SURVEY, ABSTRACT NO. 329, AND THE WINFRED BAILEY SURVEY, ABSTRACT NO. 64, GRAYSON COUNTY, TEXAS, AS DEEMED NECESSARY BY THE CITY MANAGER OR HIS DESIGNEE; GIVING NOTICE OF AN OFFICIAL DETERMINATION TO ACQUIRE THE SANITARY SEWER EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT FOR PUBLIC USE BY EMINENT DOMAIN FOR SUCH USES; AUTHORIZING THE CITY MANAGER OF THE CITY OF SHERMAN, TEXAS, TO ESTABLISH PROCEDURES FOR ACQUIRING THE EASEMENTS, OFFERING TO ACQUIRE THE EASEMENTS, VOLUNTARILY, FROM THE LANDOWNER THROUGH THE MAKING OF BONA FIDE OFFERS; APPROPRIATING FUNDS; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Sherman, Texas ("City Council") finds that there is a public necessity for the acquisition, by eminent domain, of a Sanitary Sewer Easement and a Temporary Construction Easement, as described and depicted in Exhibit A, attached hereto and incorporated herein for all purposes (collectively, the "Easements"), as deemed necessary by the City Manager or his designee for the Project (hereinafter defined); and

WHEREAS, it is the intent of the City of Sherman, Texas ("Sherman") to acquire the necessary Easements for the purposes of, among other things, the construction, access, repair and maintenance of public wastewater, including the South Side Sanitary Industrial Sewer Replacement Project (collectively, the "Project"); and

WHEREAS, the City Council finds that the description of the Easements to be acquired by eminent domain for the Project complies with Chapter 2206 of the Texas Government Code, as amended ("Chapter 2206"), in that the same provides property owner(s) in and around the area reasonable notice that the owners' property may be subject to condemnation proceedings during the planning or construction of the Project; and

WHEREAS, the City Council finds that the Project is necessary for public use; and

WHEREAS, it is necessary to establish procedures for determining the establishment and approval of just compensation for the Easements to be acquired by eminent domain for the Project; and

WHEREAS, the City Manager, or his designee ("City Manager"), is authorized to make a bona fide offer, as defined by and in compliance with Section 21.0113 of the Texas Property Code ("Bona Fide Offer"), to acquire the Easements for public use, voluntarily, from the subject landowner prior to moving forward with acquisition by eminent domain; and

WHEREAS, the City Council has investigated and determined that the passage of this Resolution complies with Chapter 2206 and other applicable laws.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Resolution as if fully set forth herein.

SECTION 2: Acquisition of Easements. The City Council hereby determines that there is a public necessity for, and the public welfare and convenience will be served by, the acquisition, by eminent domain, of the Easements, and it is Sherman's intent to acquire the Easements for public use as described and depicted herein, specifically for the purpose of, among other things, the construction, access, repair and maintenance of public wastewater improvements necessary for the Project.

SECTION 3: Authority of City Manager/Bona Fide Offer. The City Manager is hereby authorized to contract, on behalf of the City Council, with professional appraisers for appraisal services and with attorneys for preparation of title opinion(s) needed by Sherman from time to time in connection with the acquisition of the Easements. The City Council hereby ratifies any contracts entered into, prior to the effective date of this Resolution, by the City Manager with professional appraisers for appraisal services and with attorneys for preparation of title opinion(s) needed for the acquisition of the Easements. The City Manager shall first make a Bona Fide Offer to acquire the Easements from the subject landowner, voluntarily. Should the landowner fail to provide the Easements, voluntarily, through said Bona Fide Offer, the City Manager is authorized to move forward with acquiring the Easements by eminent domain.

SECTION 4: Determination of Just Compensation. The City Manager is hereby authorized and directed to examine and rely on independent appraisal reports and other information to make a determination as to the establishment and approval of a fair market value offer and the just compensation for the Easements for the purpose of making the Bona Fide Offer. After such consideration, the City Manager shall establish and approve the amount determined to be just compensation for acquisition of said Easements and shall have the authority to execute any and all documents necessary to complete the acquisition of same.

SECTION 5: Authority to Make an Offer. Upon establishment and approval by the City Manager of the amount of just compensation for the acquisition of the Easements, the City Manager is authorized to send a written Bona Fide Offer to the landowner of said Easement Property at the full amount determined and established to be just compensation therefore, and to negotiate with said landowner(s) on behalf of Sherman to acquire the Easements voluntarily.

SECTION 6: Authority to Execute Documents. The City Manager is hereby authorized to execute all documents necessary to acquire the Easements needed for the Project, on behalf of Sherman, whether by purchase or eminent domain. The City Council hereby ratifies any documents executed, prior to the effective date of this Resolution, by the City Manager which were necessary for the acquisition of the Easements for the Project.

SECTION 7: Disposal of Improvements. The City Manager is hereby authorized to remove improvements, if any, located on the Easement Property acquired in connection with this Project, should they interfere with the intended use and enjoyment of said Easements.

SECTION 8: Eminent Domain Authorized. Should the City Manager be unable to acquire the Easements, voluntarily, from the landowner(s), through the making of the Bona Fide Offer, the City Manager is authorized to instruct the law firm of Abernathy, Roeder, Boyd & Hullett, P.C., to commence eminent domain proceedings for the acquisition of the Easements for the Project.

SECTION 9: Source of Funds. The amount to be paid, if any, for acquiring the Easements for the Project will be appropriated from any lawful source.

SECTION 10: Savings/Repealing. All provisions of any resolution in conflict with this Resolution are hereby repealed to the extent they are in conflict. Any remaining portion of conflicting resolutions shall remain in full force and effect.

SECTION 11: Severability. Should any section, subsection, sentence, clause or phrase of this Resolution be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Resolution shall remain in full force and effect. The City Council hereby declares that it would have passed this Resolution, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

SECTION 12: Public Notice. The City Council finds that the meeting at which this Resolution was introduced and passed was open to the public and that public notice of the time, place and purpose of said meeting was given all as required by law.

SECTION 13: Effective Date. This Resolution shall take effect immediately from and after its passage.

INTRODUCED on this the 17th day of January 2023.

ADOPTED on this the 17th day of January 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM:
LAW FIRM OF ABERNATHY,
ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Exhibit A

Legal Description
20' Permanent Sewer Easement

Situated in the County of Grayson, State of Texas, being a part of Sherod Dunman Survey, Abstract No. 329 and the Winfred Bailey Survey, Abstract No. 64 and being a part of that 171.845 acre tract of land conveyed to HMI-SHERMAN 592, LLC, as recorded in Document No. 2022-28337, Official Public Records, Grayson County, Texas and being described by metes and bounds as follows:

Commencing at a 2" pipe found at an angle point in the west line of said 171.845 acre tract, said rod also being the north corner of that called 12.79 acre tract of land conveyed to Camacho Blanca as recorded in Volume 5752, Page 408, of said Official Public Records;

Thence North 14°30'44" West with said west line, a distance of 62.36 feet to the True-Point-of-Beginning;
Thence North 14°30'44" West with said west line, a distance of 20.65 feet to a point;
Thence North 61°05'03" East, a distance of 30.97 feet to a point;
Thence North 14°30'44" West 30' from and parallel to said west line, a distance of 616.77 feet to a point;
Thence North 65°51'03" East, a distance of 1,700.03 feet to a point;
Thence North 73°02'04" East, a distance of 583.61 feet to a point;
Thence South 16°57'56" East, a distance of 20.00 feet to a point;
Thence South 72°58'18" West, a distance of 583.80 feet to a point;
Thence South 65°51'57" West, a distance of 1,680.37 feet to a point;
Thence South 14°30'44" East, a distance of 615.47 feet to a point;
Thence South 61°05'03" West, a distance of 51.62 feet to the Point of Beginning and containing 1.359 acres of land.

Legal Description
25' Temporary Construction Easement

Situated in the County of Grayson, State of Texas, being a part of Sherod Dunman Survey, Abstract No. 329 and the Winfred Bailey Survey, Abstract No. 64 and being a part of that 171.845 acre tract of land conveyed to HMI-SHERMAN 592, LLC, as recorded in Document No. 2022-28337, Official Public Records, Grayson County, Texas and being described by metes and bounds as follows:

Commencing at a 2" pipe found at an angle point in the west line of said 171.845 acre tract, said rod also being the north corner of that called 12.79 acre tract of land conveyed to Camacho Blanca as recorded in Volume 5752, Page 408, of said Official Public Records;

Thence North 14°30'44" West with said west line, a distance of 36.55 feet to the True-Point-of-Beginning;
Thence North 14°30'44" West, a distance of 25.81 feet to a point;
Thence North 61°05'03" East, a distance of 51.62 feet to a point;
Thence North 14°30'44" West, a distance of 615.47 feet to a point;
Thence North 65°51'57" East, a distance of 1,680.37 feet to a point;
Thence North 72°58'18" East, a distance of 583.80 feet to a point;
Thence North 16°57'56" West, a distance of 20.00 feet to a point;
Thence North 73°02'04" East, a distance of 10.00 feet to a point;
Thence South 16°57'56" East, a distance of 44.98 feet to a point;
Thence South 72°58'18" West, a distance of 592.22 feet to a point;
Thence South 65°51'57" West, a distance of 1,657.70 feet to a point;
Thence South 14°30'44" East, a distance of 613.74 feet to a point;
Thence South 61°05'03" West, a distance of 77.43 feet to the Point of Beginning and containing 1.693 acres of land.

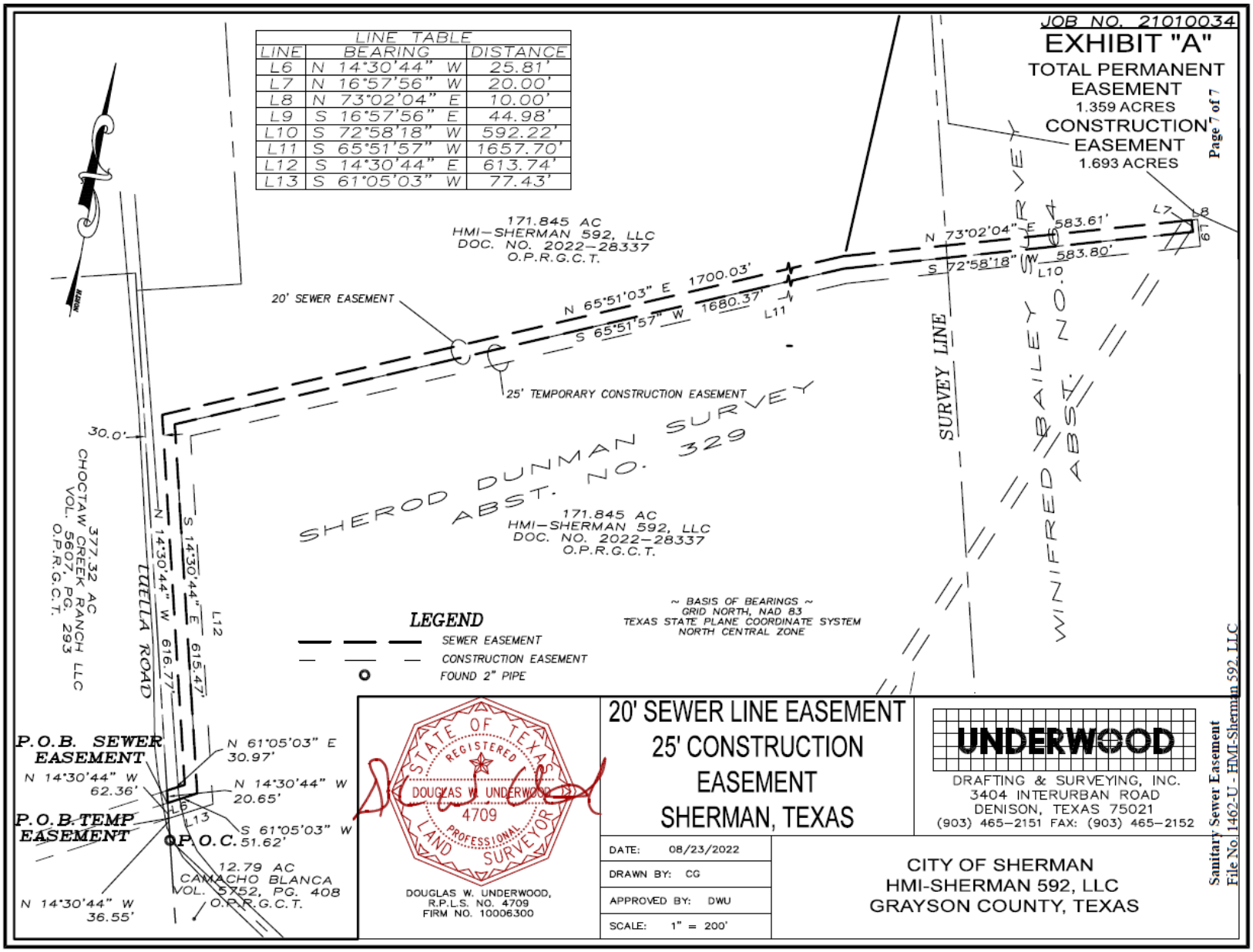
JOB NO. 21010034

EXHIBIT "A"

TOTAL PERMANENT EASEMENT
1.359 ACRES
CONSTRUCTION EASEMENT
1.693 ACRES

Page 7 of 7

LINE TABLE		
LINE	BEARING	DISTANCE
L6	N 14°30'44" W	25.81'
L7	N 16°57'56" W	20.00'
L8	N 73°02'04" E	10.00'
L9	S 16°57'56" E	44.98'
L10	S 72°58'18" W	592.22'
L11	S 65°51'57" W	1657.70'
L12	S 14°30'44" E	613.74'
L13	S 61°05'03" W	77.43'



STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

20' SEWER LINE EASEMENT
25' CONSTRUCTION EASEMENT
SHERMAN, TEXAS

DATE:	08/23/2022
DRAWN BY:	CG
APPROVED BY:	DWU
SCALE:	1" = 200'

UNDERWOOD
DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903) 465-2151 FAX: (903) 465-2152

CITY OF SHERMAN
HMI-SHERMAN 592, LLC
GRAYSON COUNTY, TEXAS

Sanitary Sewer Easement
File No. 1462-U - HMI-Sherman 592, LLC

HMI Sherman 592, LLC - Wastewater Easement
BEACH
EL SOL
TALISKER
BRISA
AQUA
LUELLA
CLIFF HESTAND
0
300
600
1,200
Feet
W
E
S
N

HMI Sherman 592, LLC - Wastewater Easement

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 6.**

Meeting Date: 01/17/2023

Prepared By: Kent Sharp, President

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7018

Approving and Adopting an Amendment to the Articles of Incorporation of the Sherman Economic Development Corporation, A Type A Economic Development Corporation, Operating Pursuant to Chapter 504 of the Texas Local Government Code And Providing for an Immediate Effective Date

Issue:

Approving and Adopting an Amendment to the Articles of Incorporation of the Sherman Economic Development Corporation, A Type A Economic Development Corporation, Operating Pursuant to Chapter 504 of the Texas Local Government Code And Providing for an Immediate Effective Date

Background:

The Sherman Economic Development Corporation (SEDCO) is Type A economic development corporation, operating pursuant to the provisions of Chapter 504 of the Texas local Government Code, as amended. On Tuesday, January 10, 2023, the Board of Directors of the SEDCO approved an agenda item requesting the City Council of the City of Sherman, Texas, approve a proposed amendment to the articles of incorporation. This proposed amendment aligns SEDCO's articles of incorporation with federal regulations regarding lobbying and similar political activities.

"**ARTICLE XI**

No dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses shall be distributed to or inure to the benefit of its directors or officers of any individual, firm, corporation or association, except that in the event the board of directors shall determine that sufficient provision has been made for the full payment of expenses, bonds and other obligations of the Corporation, then any net earnings of the Corporation thereafter accruing shall be paid to the City. No substantial part of the Corporation's activities shall be carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation it shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office."

Origination:
Sherman Economic Development Corporation

Financial Consideration:
None

Staff Recommendation:
Staff recommends approval.

Alternatives:
As directed by Council

Attachments

Resolution No. 7018
SEDCO Res. 2023.07
Amended Articles of Incorporation

RESOLUTION NO. 7018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING AND ADOPTING AN AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION, A TYPE A ECONOMIC DEVELOPMENT CORPORATION, OPERATING PURSUANT TO CHAPTER 504 OF THE TEXAS LOCAL GOVERNMENT CODE; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Sherman Economic Development Corporation (hereinafter referred to as the "SEDCO") is Type A economic development corporation, operating pursuant to the provisions of Chapters 504 of the Texas Local Government Code, as amended; and

WHEREAS, on April 10, 1996, the SEDCO filed its original Articles of Incorporation with the Texas Secretary of State's office; and

WHEREAS, Section 501.301(a) of the Texas Local Government Code provides that the "board of directors of a corporation at any time may file with the governing body of the corporation's authorizing unit a written application requesting that the authorizing unit approve an amendment to the certificate of formation;" and

WHEREAS, on Tuesday, January 10, 2023, the Board of Directors of the SEDCO approved an agenda item requesting the City Council of the City of Sherman, Texas, approve a proposed amendment to the articles of incorporation; and

WHEREAS, by the adoption of this Resolution, the City Council of the City of Sherman, Texas, finds and determines that it is advisable that the proposed amendments to the SEDCO's Articles of Incorporation be made, authorizes the same to be made, and approves the form of the proposed amendments as set forth in the Amendment to Articles of Incorporation, a copy of which is attached hereto as ***Exhibit A***, and in accordance with section 501.301(b)(1)-(3) of the Texas Local Government Code.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AS FOLLOWS:

Section 1. Incorporation of Premises. That the foregoing recitals are hereby found to be true and correct legislative findings of the City Council of the City of Sherman, Texas, and are fully incorporated into the body of this Resolution.

Section 2. Approval of Amendment to Articles of Incorporation. That the City Council of the City of Sherman, Texas, finds and determines that the Amendment to the Articles of Incorporation of the Sherman Economic Development Corporation, a copy of which is attached hereto as ***Exhibit A,*** is hereby approved and adopted by a majority vote of the City Council of the City of Sherman, Texas.

Section 3. Authorize the Filing of Amendment to Articles of Incorporation. That the City Council of the City of Sherman, Texas, authorizes the filing with the Texas Secretary of State's office the Amendment to the Articles of Incorporation of the Sherman Economic Development Corporation, a copy of which is attached hereto as ***Exhibit A*** (hereinafter referred to as the "Amendment"). Further, the City Council of the City of Sherman, Texas, authorizes City staff and SEDCO staff to take any and all actions necessary to cause said Articles of Incorporation to be amended.

Section 4. Making Certain Findings. That the City Council of the City of Sherman, Texas, in accordance with section 501.301(b)(1)-(3) of the Texas Local Government Code determines that it is advisable to adopt the Amendment; authorizes the adoption of the Amendment; and approves the form of the Amendment.

Section 5. Effective Date. This Resolution shall take effect from and after its adoption.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, on this the 17th day of January 2023.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Exhibit A

Amendment
to
Articles of Incorporation

RESOLUTION NO. SEDCO-2023.07

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION APPROVING AN AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION, A TYPE A ECONOMIC DEVELOPMENT CORPORATION, OPERATING PURSUANT TO CHAPTER 504 OF THE TEXAS LOCAL GOVERNMENT CODE; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Sherman Economic Development Corporation (hereinafter referred to as the "SEDCO") is Type A economic development corporation, operating pursuant to the provisions of Chapters 504 of the Texas Local Government Code, as amended; and

WHEREAS, on April 10, 1996, the SEDCO filed its original Articles of Incorporation with the Texas Secretary of State's office; and

WHEREAS, Section 501.301(a) of the Texas Local Government Code provides that the "board of directors of a corporation at any time may file with the governing body of the corporation's authorizing unit a written application requesting that the authorizing unit approve an amendment to the certificate of formation;" and

WHEREAS, on Tuesday, January 10, 2023, the Board of Directors of the SEDCO approved an agenda item requesting the City Council of the City of Sherman, Texas, approve a proposed amendment to the articles of incorporation.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SHERMAN ECONOMIC DEVELOPMENT CORPORATION, AS FOLLOWS:

Section 1. Incorporation of Premises. That the foregoing recitals are hereby found to be true and correct legislative findings of the Board of Directors of SEDCO and are fully incorporated into the body of this Resolution.

Section 2. Approval of Amendment to Articles of Incorporation. That the Board of Directors of SEDCO find and determine that the Amendment to the Articles of Incorporation of the Sherman Economic Development Corporation, a copy of which is attached hereto as ***Exhibit A,*** is hereby approved and adopted by a majority vote of the Board of Directors of SEDCO.

Section 3. Making Certain Findings. That the Board of Directors of SEDCO in accordance with section 501.301(b)(1)-(3) of the Texas Local Government Code determines that it is advisable to adopt the Amendment; authorizes the adoption of the Amendment; and approves the form of the Amendment.

Section 4. Effective Date. This Resolution shall take effect from and after its adoption.

PASSED AND APPROVED by the Board of Directors of the Sherman Economic Development Corporation, on this the 10th day of January, 2023.

ATTEST:

Janie Bates, Chair

Jason Brumm, Secretary

APPROVED AS TO FORM:

Jeff Moore, Attorney for SEDCO

Exhibit A

Amendment
to
Articles of Incorporation

AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
SHERMAN ECONOMIC DEVELOPMENT CORPORATION

The Sherman Economic Development Corporation (hereinafter referred to as the "SEDCO") is Type A economic development corporation, operating pursuant to the provisions of Chapters 504 of the Texas Local Government Code, as amended, adopts the following Amendment to its Articles of Incorporation:

WHEREAS, the SEDCO was incorporated as a Section 4A economic development corporation, now referred to as a Type A economic development corporation, operating pursuant to the provisions of Chapter 504 of the Texas Local Government Code, as amended; and

WHEREAS, on April 10, 1996, the SEDCO filed its original Articles of Incorporation with the Texas Secretary of State's office; and

WHEREAS, the City Council of the City of Sherman, Texas, finds and determines that the Article XI of the Articles of Incorporation of the SEDCO should be amended as herein contained.

SECTION ONE
NAME

The name of the corporation is the "Sherman Economic Development Corporation."

SECTION TWO
AMENDMENT

(a) **Amendment.** That Article XI of the Articles of Incorporation of the Sherman Economic Development Corporation is hereby amended to read as follows:

"ARTICLE XI

No dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses shall be distributed to or inure to the benefit of its directors or officers of any individual, firm, corporation or association, except that in the event the board of directors shall determine that sufficient provision has been made for the full payment of expenses, bonds and other obligations of the Corporation, then any net earnings of the Corporation thereafter accruing shall be paid to the City. No substantial part of the Corporation's activities shall be carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to

any candidate for public office."

SECTION THREE

The amendment was adopted in the following manner:

The amendments were approved at a meeting of the Board of Directors of the Sherman Economic Development Corporation on January 10, 2023, and received the vote of a majority of the City Council of the City of Sherman, Texas, at its meeting held on January 10, 2023, 2023. A resolution of the City Council of the City of Sherman, Texas, adopting this Amendment to the Articles of Incorporation is attached hereto.

SHERMAN ECONOMIC DEVELOPMENT CORPORATION
a Texas non-profit corporation

Janie Bates, Chair

Jason Brumm, Secretary

VERIFICATION

Before me, the undersigned authority, on this day personally appeared Janie Bates, Chair, who, after being duly sworn, stated under oath that she is Chair of the Sherman Economic Development Corporation, a Texas non-profit corporation, that she has read the above and foregoing Amendment to Articles of Incorporation, and that to the best of his knowledge the statements made therein are true and correct.

SUBSCRIBED AND SWORN TO on this the 10 day of January, 2023.

SHANNON BLAKE
Notary Public, State of Texas
Comm. Expires 09-06-2026
Notary ID 13397386-9

NOTARY PUBLIC, State of Texas

Commission expires: 9/6/26

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 7.**

Meeting Date: 01/17/2023

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 7019***

Authorizing Execution of an Encroachment Agreement with Hope on Houston for the Encroachment of an Existing Building within the Proposed Platted 10-foot Utility Easement along the South and West Property Lines of Hope on Houston Addition and a Proposed 20-Foot Wastewater Easement, Approved by City Council on January 3, 2022, to be Filed in the Plat Records, Grayson County, Texas, Locally Known as 901 E. Houston Street in the City of Sherman, Texas

Issue:

To consider executing an encroachment agreement relating to a proposed 10-foot utility easement and 20-foot wastewater easement to be filed of record in Hope on Houston Addition in the City of Sherman, Texas

Background:

Hope on Houston, the property owner of 901 E. Houston, has requested a building permit for the subject property. In the building permit review, it was determined that the property must be platted prior to issuing said building permit. Upon platting, the City has required a 10' Utility Easement be dedicated via plat along the south and west property lines as well as a 20' Wastewater Easement over the existing wastewater main. Dedicating the required utility easement will put the existing building into non-conformance. An Encroachment Agreement will be necessary for this building to remain in its current location and for the property owner to receive a building permit for their improvement of the property.

Origination:

Hope on Houston, property owner

Financial Consideration:

None

Staff Recommendation:

City staff has no objections to the proposed encroachment and, upon receiving approval from the franchised utilities, it is recommended that the encroachment be executed.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 7019
Encroachment Agreement with Exhibits
Exhibit A
Proposed Plat - Hope on Houston Addition
Aerial Location Map

RESOLUTION NO. 7019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENCROACHMENT AGREEMENT WITH HOPE ON HOUSTON FOR THE ENCROACHMENT OF AN EXISTING BUILDING WITHIN THE PROPOSED PLATTED 10-FOOT UTILITY EASEMENT ALONG THE SOUTH AND WEST PROPERTY LINES OF HOPE ON HOUSTON ADDITION AND A PROPOSED 20-FOOT WASTEWATER EASEMENT, APPROVED BY CITY COUNCIL ON JANUARY 3, 2022, TO BE FILED IN THE PLAT RECORDS, GRAYSON COUNTY, TEXAS, LOCALLY KNOWN AS 901 E. HOUSTON STREET IN THE CITY OF SHERMAN; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an encroachment agreement for the encroachment for an existing building within the proposed platted 10-foot utility easement running along the south and west property lines of Hope on Houston Addition and a proposed 20-foot Wastewater Easement, approved by City Council on January 3, 2022, to be filed in the Plat Records, Grayson County, Texas, locally known as 901 E. Houston Street in the City of Sherman, as shown on the Exhibit "A" attached hereto and incorporated herein for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVEDBY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 17th day of January 2023.

CITY OF SHERMAN, TEXAS

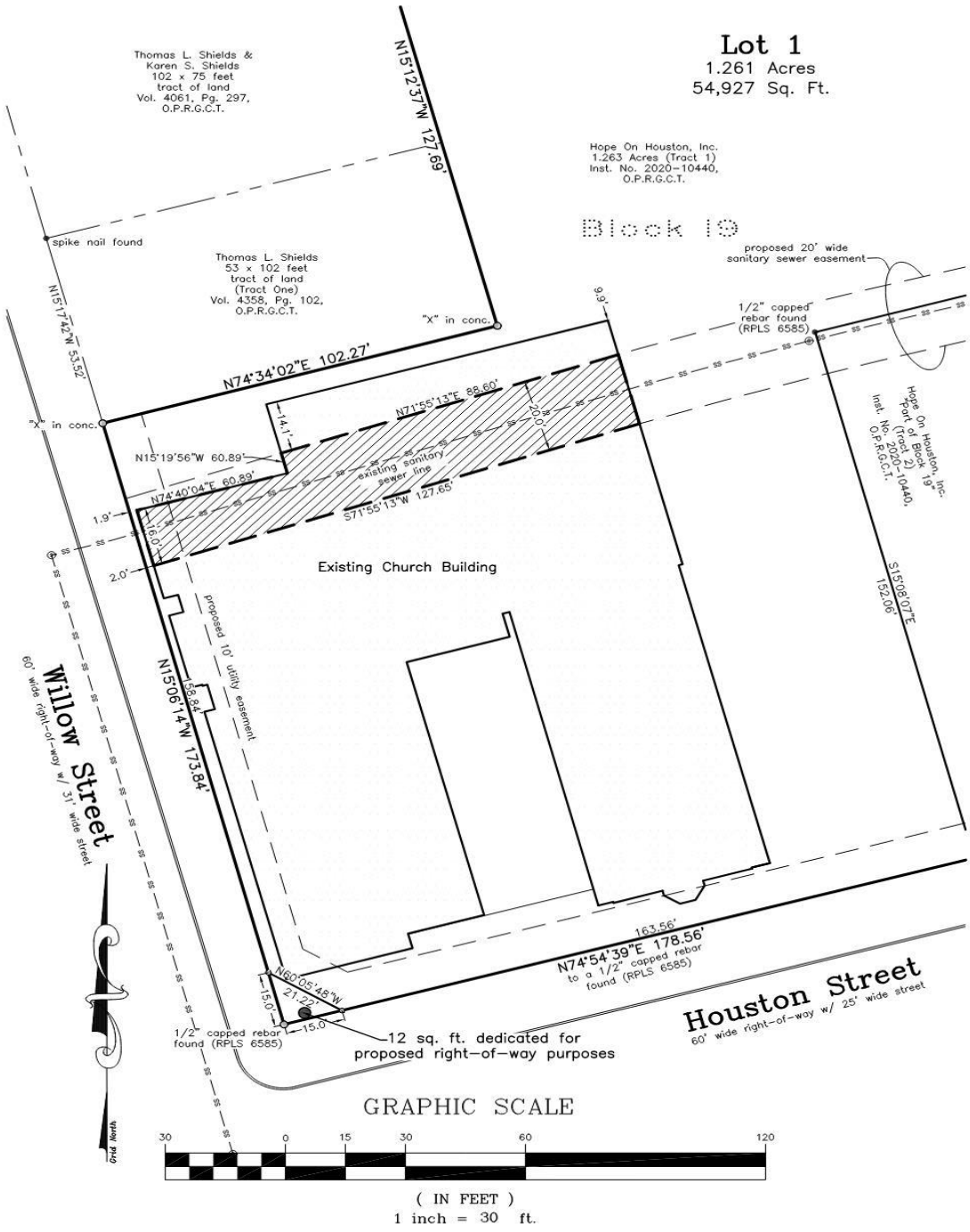
BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM:
LAW FIRM OF ABERNATHY,
ROEDER, BOYD & HULLETT, P.C.

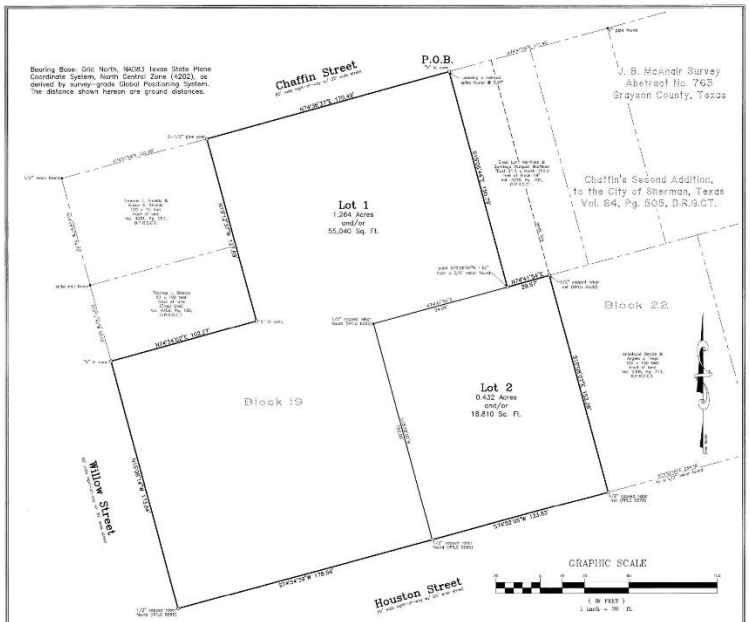
BY: _____
RYAN D. PITTMAN, CITY ATTORNEY



Helvey-Wagner Surveying, Inc.
222 W. Main St., Denison, Texas 75020
Phone (903) 463-6191
Email: kate@helveywagnersurvey.net
TBPELS Firm Registration No. 10088100

Building Encroachment within Proposed Utility Easement for: Hope on Houston Addition, City of Sherman, Texas

X:\Shared Projects\Part-of-Block-19-Chaffins-Addition\Drawings\Replat.dwg 10/13/2022 1:16 PM



Hope on Houston Addition
(being a Replat of a part of Block 19, Chaffin's Addition)
to the
City of Sherman, Texas
1.695 Acres
in the
J. B. McAnair Survey
Abstract No. 763

General Notes:

1. Water Supply to be provided by the City of Sherman, Texas.
2. Sewer service to be provided by the City of Sherman, Texas.
3. Electrical service is provided by Oncor Electric Company.
4. Blocking the flow of water or construction of improvements in drainage easements, and filling or obstruction of the floodway is prohibited.
5. Any existing creeks or drainage channels traversing along or across the addition will remain as open channels and will be maintained by the individual owners of the lot or lots that are traversed by or adjacent to the drainage courses along or across said lots.
6. The City of Sherman will not be responsible for the maintenance and operation of said drainage ways or for the control of erosion.
7. The property shown on the plat hereon lies within a Zone "X" (areas determined to be outside 500-year floodplain) designation, as shown on the Flood Insurance Rate Map for Grayson County, Texas and Incorporated Areas, Map No. 48181C0269 F, Revised Date: September 26, 2008.
8. Neither the City of Sherman nor the undersigned surveyor will be responsible for any damage, personal injury, or loss of life or property occasioned by flooding or flooding conditions.
9. The owners and builders must comply with all other state and federal regulations regarding developments at this type.

Job No. CGS021021

Vicinity Map
(not to scale)

Helvey-Wagner Surveying, Inc.
222 W. Main St., Denison, Texas 75020
Phone: (903) 463-5191
Email: info@helveywagnersurveying.net
TBPELS Firm Registration No. 10089100

Owner:
Hope on Houston, Inc.
2610 Shenandoah Circle
Sherman, Texas 75092

FIELD NOTES

SITUATED in the City of Sherman, County of Grayson, State of Texas, and being a part of the J. B. McAnair Survey, Abstract No. 763 and being part of Block 19, Chaffin's Addition, to the City of Sherman, Texas, as per plat of record in Volume 84, Page 505, Deed Records, Grayson County, Texas, said Part of Block 19 also being described as 1.283 acres (*Tract 1*), and 121.50 ft. by 150 ft. tract of land (*Tract 2*), conveyed by Correction General Warranty Deed from Wattmen Holdings, LLC, to Hope on Houston, Inc., on April 16, 2020, recorded in Instrument No. 2020-10440, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a "X" found in concrete on the South right-of-way line of Chaffin Street, a North line of said Block 19, at the Northwest corner of the Sheri Lynn Martinez and Santiago Vazquez Martinez "Tract 31.5 x 150.0 feet of Block 19", recorded in Volume 2028, Page 702, said Official Public Records, the Northeast corner of said Hope 1.263 ac. and the most Northern Northeast corner of the herein described tract, **SAID** "X" being South 74 deg. 41 min. 56 sec. West, 111.45 ft. from a 1 inch pipe found;

THENCE South 15 deg. 06 min. 44 sec. East, with an East line of said Hope 1.263 ac. and the West line of said Martinez tract, **PASSING** a railroad spike found at 0.67 ft., and continuing for a **TOTAL** distance of 150.76 ft. to a point that bears South 75 deg. 26 min. 09 sec. West, 1.80 ft. from a 3/8 inch rebar found at the Southwest corner of said Martinez tract, an ell point of said Hope Tract 2 and an ell corner of both said Hope 1.263 ac. and the herein described tract;

THENCE North 74 deg. 41 min. 54 sec. East, with a North line of said Hope Tract 2 and the South line of said Martinez tract, a distance of 29.57 ft. to a 1/2 inch capped rebar set stamped (*RPLS 6578*) in the "apparent" East line of said Block 19 and the "apparent" West line of Block 22, said Chaffin's Addition, at the Northwest corner of the Anastasio Garcia and Angela J. Trejo 100 x 150 feet tract of land, recorded in Volume 2305, Page 313, Real Property Records, Grayson County, Texas and the most Eastern Northeast corner of the herein described tract;

THENCE South 15 deg. 08 min. 07 sec. East, with the "apparent" East line of said Block 19 and the "apparent" the West line of said Block 22, a distance of 150.26 ft. to a 1/2 inch capped rebar set stamped (*RPLS 6578*) in the North right-of-way line of Houston Street, at the "apparent" Southeast corner of said Block 19 and the "apparent" Southwest corner of both said Block 22 and Garcia tract, at the Southeast corner of the herein described tract;

THENCE South 74 deg. 52 min. 05 sec. West, with the North right-of-way line of said Houston Street and a South line of both said Block 19 and said Hope Tract 2, a distance of 123.63 ft. to a 1/2 inch capped rebar found stamped (*RPLS 6585*) at the Southwest corner of said Hope Tract 2 and the most Southern Southeast corner of said Hope 1.263 ac., at an angle point of the herein described tract;

THENCE South 74 deg. 54 min. 39 sec. West, continuing with the North right-of-way line of said Houston Street and a South line of both said Block 19 and said Hope 1.263 ac., a distance of 178.58 ft. to a 1/2 inch capped rebar found stamped (*RPLS 6585*) at the intersection of the North line of said Houston Street with the East line of Willow Street, at the Southwest corner of all said Block 19, Hope 1.263 ac. and the herein described tract;

THENCE North 15 deg. 05 min. 14 sec. West, with the East right-of-way line of said Willow Street and a West line of said Hope 1.263 ac., a distance of 173.84 ft. to a "X" found in concrete at the Southwest corner of the Thomas L. Shields 53 x 102 feet tract of land (*Tract One*), recorded in Volume 4258, Page 102, said Official Public Records and the most Western Northwest corner of both said Hope 1.263 ac. and the herein described tract, **SAID** "X" being South 15 deg. 17 min. 40 sec. West, 53.55 ft. from a spike nail found;

THENCE North 74 deg. 34 min. 02 sec. East, with a North line of said Hope 1.263 ac. and the South line of said Shields Tract One, a distance of 102.27 ft. to a "X" found in concrete at the Southeast corner of said Shields Tract One, an ell corner of both said Hope 1.263 ac. and the herein described tract;

THENCE North 15 deg. 12 min. 37 sec. West, with a West line of said Hope 1.263 ac. and the East line of said Shields Tract One, a distance of 127.65 ft. to a 2-1/2 inch pipe post found in the South right-of-way line of said Chaffin Street and the North line of said Block 19, at the Northeast corner of the Thomas L. Shields and Karen S. Shields 103 x 75 feet tract of land, recorded in Volume 4061, Page 297, said Official Public Records, the most Northern Northwest corner of both said Hope 1.263 ac. and the herein described tract, **SAID** post being North 74 deg. 51 min. 56 sec. East, 102.00 ft. from a 1/2 inch rebar found;

THENCE North 74 deg. 36 min. 37 sec. East, with the South right-of-way line of said Chaffin Street and the North line of both said Block 19 and said Hope 1.263 ac., a distance of 170.49 ft. to the **PLACE OF BEGINNING** and containing **1.695 ACRES and/or 73,850 SQUARE FEET** of land.

KNOW ALL MEN BY THESE PRESENTS:

THAT I, Kate A. Wagner, Registered Professional Land Surveyor, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision. In accordance with the subdivision regulations of the City of Sherman, Texas.

Kate A. Wagner, R. P. L. S. No. 6578 Date:

I, Hope on Houston, Inc., sole owner of Hope on Houston Addition to the City of Sherman, Texas do hereby dedicate the streets, easements, alleys, rights-of-way, parks, school sites and other public places shown hereon to the public use forever.

Gail Utter, Authorized Representative for Hope on Houston, Inc.

Before me the undersigned, a notary public in and for said County and State, on this day personally appeared Gail Utter, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this _____ day of _____, 2021.

Notary Public, Grayson County, Texas

Sherman
CLASSIC TOWN BROAD-HORIZON

This, the final plat of Hope on Houston Addition to the City of Sherman, Texas is hereby approved this _____ day of _____, 2021, by the Planning and Zoning Commission of the City of Sherman, Texas.

Chairman Secretary

This, the final plat of Hope on Houston Addition to the City of Sherman, Texas is hereby approved this _____ day of _____, 2021, by the City Council of the City of Sherman, Texas.

ACCEPTED BY THE CITY COUNCIL OF SHERMAN, TEXAS:
MAYOR, CITY OF SHERMAN, TEXAS DATE

The undersigned, the City Clerk of the City of Sherman, Texas, does hereby certify that the foregoing final plat of Hope on Houston Addition to the City of Sherman, Texas was submitted to the City Council of Sherman, Texas, on the _____ day of _____, 2021, and the City Council by formal action then and there accepted the dedication of streets, alleys, easements and public places, as shown and set forth in and upon said map or plat, and said City Council further authorizes the Mayor to note the acceptance thereof by signing his name as hereinabove subscribed.

WITNESS MY HAND THIS _____ DAY OF _____, 2021, BY
CITY CLERK, CITY OF SHERMAN, TEXAS

Hope on Houston Addition
(being a Replat of a part of Block 19, Chaffin's Addition)
to the
City of Sherman, Texas
1.695 Acres
in the
J. B. McAnair Survey
Abstract No. 763

Helvey-Wagner Surveying, Inc.
222 W. Main St., Denison, Texas 75020
Phone: (903) 463-5191
Email: info@helveywagnersurveying.net
TBPELS Firm Registration No. 10089100

Owner:
Hope on Houston, Inc.
2610 Shenandoah Circle
Sherman, Texas 75092

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVERS' LICENSE NUMBER.

After Recording Return to:
City of Sherman
Office of the City Attorney
P. O. Box 1106
Sherman, TX 75091-1106

ENCROACHMENT AND LICENSE AGREEMENT

THIS ENCROACHMENT AND LICENSE AGREEMENT ("Agreement") is made and entered into by and between the CITY OF SHERMAN, TEXAS, a home-rule municipality ("City"), and HOPE ON HOUSTON ("Licensee"). City and Licensee are sometimes referred to collectively as the "parties" or individually as a "party."

WHEREAS, City and any Franchise Utility Company (each a "Franchisee") have existing rights in certain real property by virtue of that certain Plat of the Hope on Houston Addition ("Plat"), approved by the Sherman City Council on January 3, 2022, to be filed in the Plat Records, Grayson County, Texas. The Plat, which more particularly describes and depicts a 10-foot Utility Easement and a 20-foot Wastewater Easement ("Property"), is incorporated herein by reference for all purposes; and

WHEREAS, Licensee desires to operate, repair and maintain an Existing Building ("Encroaching Facility"), as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference for all purposes, within the boundaries of the Property; and

WHEREAS, in exchange for the consideration set forth below, City has agreed to grant a license to permit the encroachment of the Encroaching Facility on the Property subject to the terms and conditions of this Agreement and provided that Licensee first complies with the City's ordinances relating to the construction and use of the Encroaching Facility.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Licensee do hereby agree as follows:

1. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement.

2. Location of Encroaching Facility. City hereby grants a nonexclusive license to Licensee, authorizing Licensee to, at its own cost and expense, maintain and repair

the Encroaching Facility within that portion of the Property as generally depicted and described in Exhibit A, subject to the terms and conditions of this Agreement. Any modification, alteration, expansion or addition to the Encroaching Facility, or any portion thereof, is prohibited without the prior written consent of City. In particular, Licensee shall not modify the Encroaching Facility in any manner that results in the Encroaching Facility: (a) occupying more space within the Property than as approved by this Agreement; (b) extending further into the Property than as approved by this Agreement; or (c) changing the Encroaching Facility's location within the Property to be outside the area approved by this Agreement. Licensee shall ensure that Licensee and any third party and/or contractor of Licensee engaged in maintaining and/or repairing the Encroaching Facility abide by the terms and conditions set forth herein and any permit governing the Encroaching Facility. Licensee shall, at its own cost and expense, provide a copy of this Agreement to any third party and/or contractor of Licensee engaged in maintaining and/or repairing the Encroaching Facility. Notwithstanding anything to the contrary herein, nothing in this Agreement shall be deemed to waive any applicable requirement of the City's ordinances or regulations applicable to the Encroaching Facility, and Licensee shall be responsible for obtaining a permit, if required under the City's ordinance, prior to any construction on the Encroaching Facility.

3. Restrictions on Use of Property. In using the Property for the purposes described herein, Licensee shall, at its own cost and expense, comply with all applicable laws, rules, regulations and requirements, as they exist, may be amended or in the future arising, including but not limited to, City's ordinances, and shall promptly execute and fulfill all orders and requirements imposed by City or other governmental authorities for the correction, prevention and abatement of nuisances or Code violations in, on or connected with the Encroaching Facility. At the conclusion of any work in connection with the Encroaching Facility, Licensee shall ensure that any third party and/or contractor of Licensee engaged in such work shall remove all debris and other materials from the Property and restore the same to substantially the same condition it was in prior to the commencement of the work thereon or in proximity thereto, with the exception of the encroachment permitted herein. Licensee shall ensure that any third party and/or contractor of Licensee engaged in maintaining and/or repairing the Encroaching Facility does not, and shall not itself, place trash dumpsters, toxic or hazardous substances or flammable material in or on the Property. Additionally, Licensee shall not place in or on the Property any other improvements unless approved in advance in writing by City. Any modification, alteration, expansion or other addition to the Encroaching Facility, or any portion thereof, is prohibited without the prior written consent of City.

4. Maintenance of Encroaching Facility. Licensee shall, at Licensee's sole cost and expense, maintain the Encroaching Facility in good condition and repair. City will not, under any circumstance, be responsible for any costs, whatsoever, of construction, reconstruction, operation, maintenance, repair or removal of the Encroaching Facility. If City notifies Licensee of any deficiencies in any such

maintenance, repair or removal of the Encroaching Facility, Licensee shall make the necessary repairs within the earlier of (a) thirty (30) days after the date of such notice or the (b) another date as determined by City and Licensee in writing. If City notifies Licensee of any deficiencies in any such maintenance, repair or removal of the Encroaching Facility, and Licensee shall thereafter fail to complete such maintenance, repair or removal within the required time period, then City may require Licensee to promptly remove the Encroaching Facility or contract, at Licensee's sole cost and expense, for the maintenance, repair or removal of the Encroaching Facility.

5. Removal of Encroaching Facility. City and any Franchisee are entitled to remove all or a portion of the Encroaching Facility as reasonably necessary to construct, reconstruct, maintain or repair public improvements within the affected Property. City or Franchisee will notify Licensee of any intent to remove all, or a portion, of the Encroaching Facility, and upon receiving such notice, Licensee shall ensure that the requested removal is made within the earlier of (a) thirty (30) days after the date of such notice or (b) another date as determined by City and Licensee in writing. If City or Franchisee notifies Licensee of its intent to remove all, or a portion, of the Encroaching Facility, and Licensee shall thereafter fail to complete the removal within the required time period, then City or Franchisee may require Licensee to promptly remove the Encroaching Facility. Notwithstanding anything to the contrary herein, if the removal is necessitated by an emergency, no notice is required. If so removed, City or Franchisee has no obligation to replace the affected portions of the Encroaching Facility upon completion of such work.

6. Risk and Liability. Licensee assumes all risks and liability resulting or arising from or relating to Licensee's use of the Property, the Encroaching Facility, the existing condition or location of the Property or the existing state of maintenance, repair or operation of the Property. Licensee agrees and acknowledges that City or Franchisee shall not be liable, whatsoever, for any damage to the Encroaching Facility as a result of City's or Franchisee's use or enjoyment of the rights provided it in the Property. Any City and/or Franchisee property or infrastructure damaged or destroyed by Licensee or its agents, employees, representatives, invitees, contractors, subcontractors and/or any other third parties for whom Licensee is legally responsible, shall be repaired or replaced by City or Franchisee at Licensee's sole cost and expense and payment is due immediately upon Licensee's receipt of an invoice from City or Franchisee.

7. **INDEMNIFICATION. LICENSEE AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES AND ANY OTHER THIRD PARTIES FOR WHOM CITY IS LEGALLY RESPONSIBLE, AS WELL AS EACH FRANCHISEE, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, AND ANY OTHER THIRD PARTIES FROM WHOM FRANCHISE IS LEGALLY RESPONSIBLE FROM AND**

AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE (INCLUDING LOSS OF USE), LOSSES, DEMANDS, EXPENSES AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), OR OTHER HARM ARISING OUT OF, OR OCCASIONED BY, ANY NEGLIGENCE, GROSS NEGLIGENCE AND/OR WILLFUL MISCONDUCT, WHETHER BY ACT OR OMISSION, OF ANY LICENSEE OR ITS AGENTS, REPRESENTATIVES, EMPLOYEES, SEPARATE CONTRACTORS AND/OR SUBCONTRACTORS AND/OR THIRD PARTIES FOR WHOM EACH SUCH LICENSEE IS LEGALLY RESPONSIBLE, REGARDLESS OF ANY JOINT OR CONCURRENT NEGLIGENCE OF CITY OR FRANCHISEE.

IN ITS SOLE DISCRETION, CITY AND FRANCHISEE SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY LICENSEE IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY OR FRANCHISEE, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY OR FRANCHISEE IN WRITING. CITY AND FRANCHISEE RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY AND FRANCHISEE IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY OR FRANCHISEE IS NOT TO BE CONSTRUED AS A WAIVER OF LICENSEE'S OBLIGATION TO DEFEND CITY OR FRANCHISEE OR AS A WAIVER OF LICENSEE'S OBLIGATION TO INDEMNIFY CITY OR FRANCHISEE PURSUANT TO THIS AGREEMENT. LICENSEE SHALL RETAIN CITY-APPROVED OR FRANCHISEE-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S OR FRANCHISEE'S WRITTEN NOTICE THAT CITY OR FRANCHISEE IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF ANY LICENSEE FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY AND FRANCHISEE SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND LICENSEE SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY OR FRANCHISEE.

THE PROVISIONS OF THIS SECTION 7 ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON, ENTITY OR THIRD PARTY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS SECTION 7 SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

8. No "Permit." **NOTHING CONTAINED IN THIS AGREEMENT SHALL CONSTITUTE A "PERMIT" AS DEFINED IN CHAPTER 245, TEX. LOC. GOV'T CODE, AND NOTHING IN THIS AGREEMENT SHALL BE CONSIDERED TO PROVIDE THE CITY WITH FAIR NOTICE OF A PROJECT. LICENSEE WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEX. LOC. GOV'T CODE BASED ON THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

9. Default/Remedies. If Licensee, its employees, agents, representatives, contractors, subcontractors and/or any other third parties for whom Licensee is legally responsible, defaults under any of the terms and conditions of this Agreement and such default continues for a period of five (5) days after City or Franchisee notifies Licensee of such default in writing, City or Franchisee may, at its sole election and in addition to any other remedies it may exercise, terminate this Agreement, and upon such termination, all of Licensee's rights hereunder shall cease and terminate. This Agreement shall also terminate upon Licensee's abandonment of the Encroaching Facility.

10. Miscellaneous Provisions.

a. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested; by electronic mail, with documentation evidencing the addressee's receipt thereof; or by delivering the same in person to such party via hand-delivery service, or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the Parties shall be as follows:

If to City, addressed to it at:
City of Sherman
Attention: Wayne E. Lee, P.E., CFM, Director of Engineering
220 W. Mulberry St.
Sherman, TX 75091
Telephone: (903) 892-7327
Email: waynel@cityofsherman.com

with a copy to:
Abernathy, Roeder, Boyd & Hullett, P.C.
Attention: Ryan D. Pittman
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069

Telephone: (214) 544-4000
Email: rpittman@abernathy-law.com

If to Licensee, addressed to it at:
Hope on Houston
c/o Gail Utter
901 E. Houston Street
Sherman, TX 75090

b. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties.

c. Governing Law; Venue. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Grayson County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.

d. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail signature will also be deemed to constitute an original if properly executed and delivered to the other party.

e. Authority to Execute. Each party represents and warrants to the other that it has the full power and authority to enter into and fulfill the obligations of this Agreement. The respective signatories to this Agreement, by affixing its signatories hereto, warrant and represent that they have the authority to bind its respective parties as duly authorized representatives thereof.

f. Savings/Severability. In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, void, unenforceable or unlawful by a court of competent jurisdiction, then that term, condition or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.

g. Representations. Each party represents that it has carefully read this Agreement, knows the contents hereof, has consulted with an attorney of its choice regarding the meaning and effect hereof and is signing the same solely of its own judgment.

h. No Third Party Beneficiaries. The parties do not intend that this Agreement be construed as creating any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

i. Indemnification. The parties agree that the indemnity provisions set forth in Section 7 herein are conspicuous, and the parties have read and understood the same.

j. Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

k. Immunity. The parties acknowledge and agree that, in executing and performing this Agreement, City has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

l. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by the parties. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

[*Signature page follows.*]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to system it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement.

CITY:

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Robby Hefton, City Manager
Date: _____

LICENSEE:

HOPE ON HOUSTON

By: Gail Utter
GAIL UTTER, Chair
Date: 1-11-2023

THE STATE OF TEXAS §
§
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared Robby Hefton, known to me to be the person whose name is subscribed to the foregoing instrument; he acknowledged to me that he is the city manager and duly authorized representative of the CITY OF SHERMAN, TEXAS, a Texas home-rule municipality, and that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of the CITY OF SHERMAN, TEXAS.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20__.

_____
Notary Public in and for the State of Texas
My Commission Expires: _____

STATE OF TEXAS §
§
COUNTY OF GRAYSON §

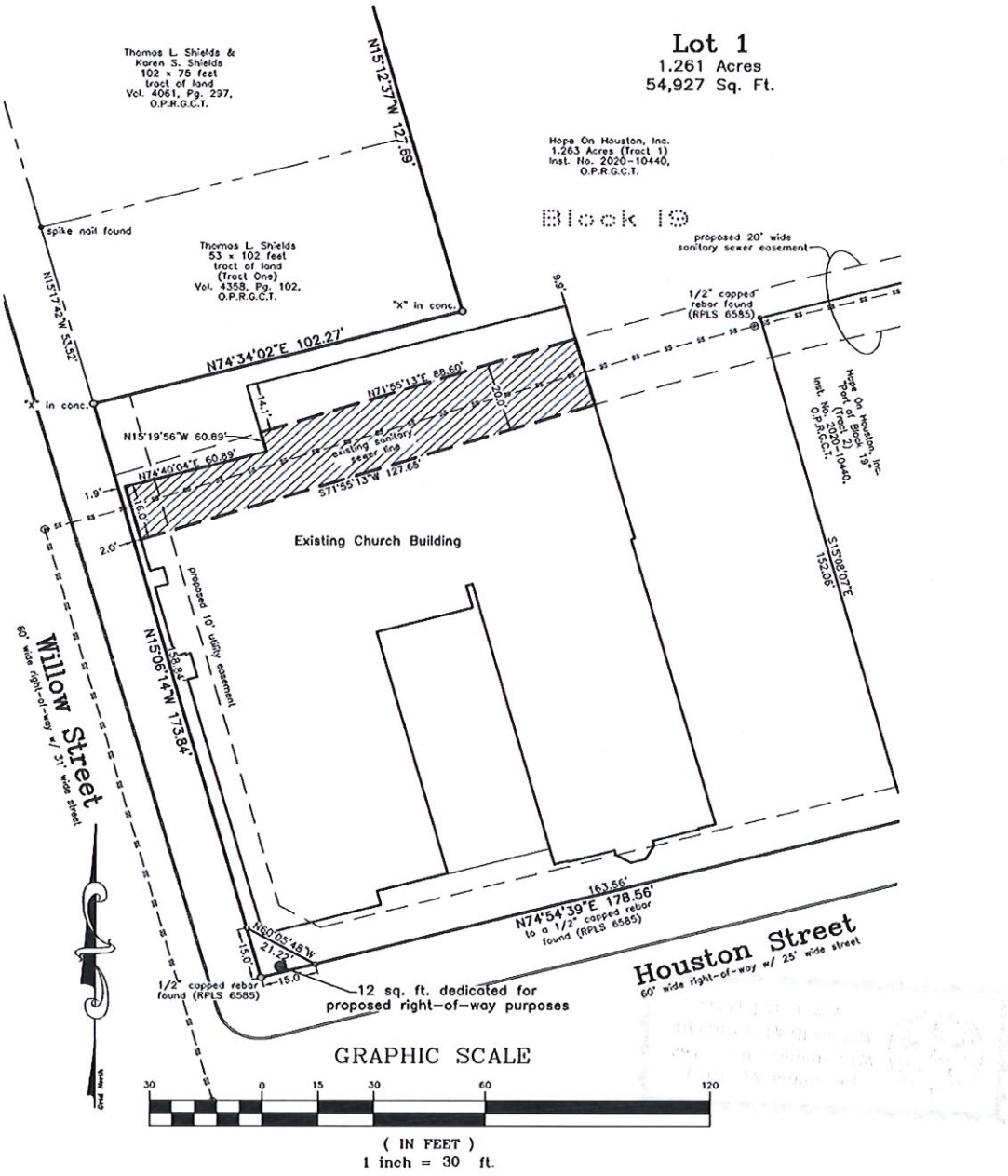
BEFORE ME, the undersigned authority, on this day personally appeared GAIL UTTER known to me to be the person whose name is subscribed to the foregoing instrument, and that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 11th day of January, 2023.

NATALIE M TUTTLE
Notary ID #126730920
My Commission Expires
December 27, 2024

Natalie Tuttle
Notary Public in and for the State of Texas
My Commission Expires: 12/27/2024

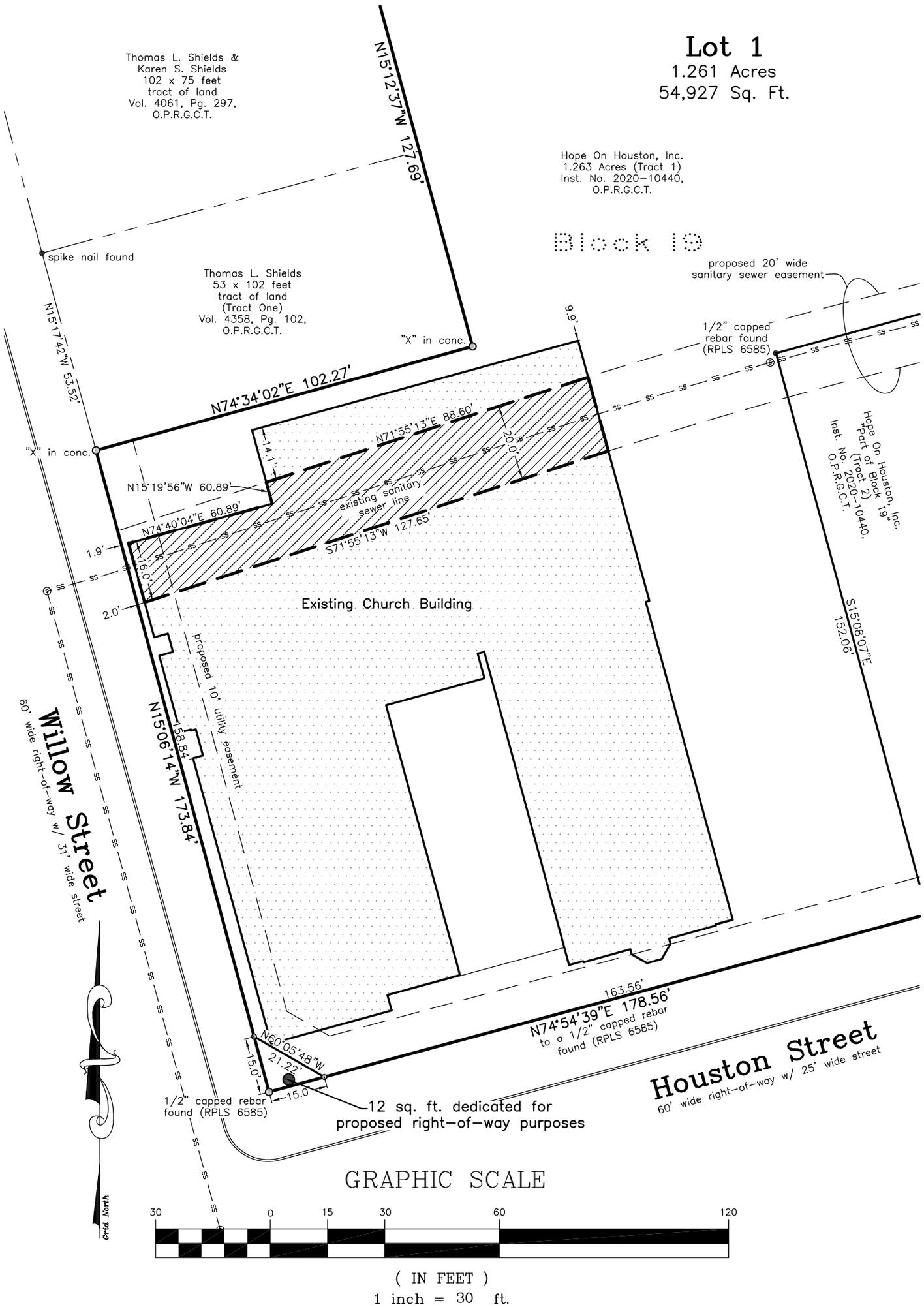
EXHIBIT A



Helvey-Wagner Surveying, Inc.
222 W. Main St., Denison, Texas 75020
Phone (903) 463-6191
Email: kate@helveywagnersurvey.net
TBPELS Firm Registration No. 10088100

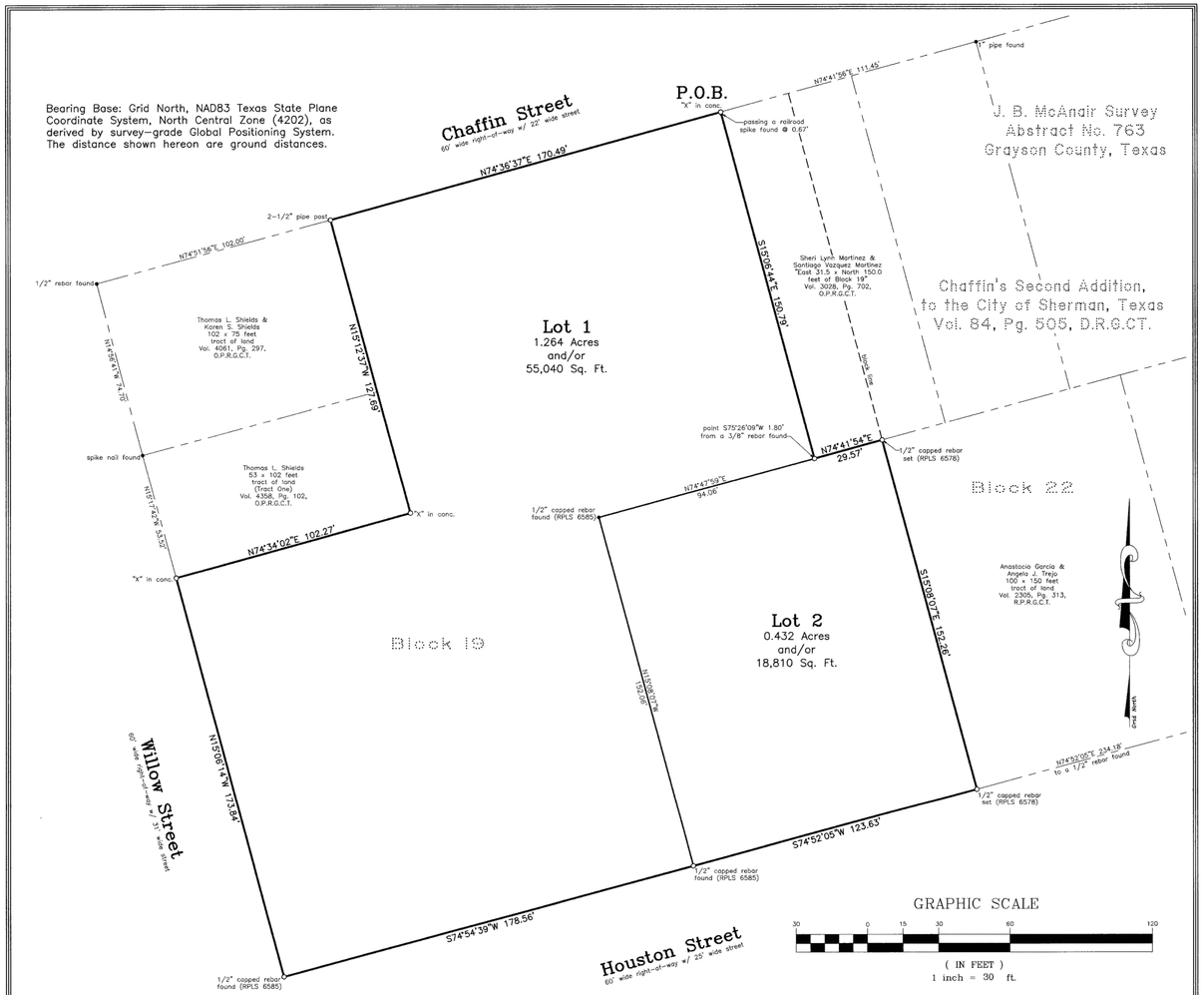
Building Encroachment within Proposed Utility Easement for: Hope on Houston Addition, City of Sherman, Texas

X:\Shared Projects\Part-of-Block-19-Chaffins-Addition\Drawings\Replat.dwg 10/13/2022 1:16 PM



Building Encroachment within Proposed Utility Easement for: Hope on Houston Addition, City of Sherman, Texas

Helvey-Wagner Surveying, Inc.
222 W. Main St., Denison, Texas 75020
Phone (903) 463-6191
Email: kate@helveywagnersurvey.net
TBPELS Firm Registration No. 10088100



Hope on Houston Addition
(being a Replat of a part of Block 19, Chaffin's Addition)
to the
City of Sherman, Texas
1.695 Acres
in the
J. B. McAnair Survey
Abstract No. 763

General Notes:

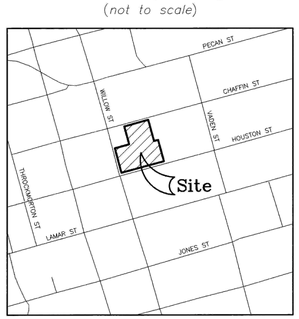
1. Water Supply to be provided by the City of Sherman, Texas.
2. Sewer service to be provided by the City of Sherman, Texas.
3. Electrical service is provided by Oncor Electric Company.
4. Blocking the flow of water or construction of improvements in drainage easements, and filling or obstruction of the floodway is prohibited.
5. Any existing creeks or drainage channels traversing along or across the addition will remain as open channels and will be maintained by the individual owners of the lot or lots that are traversed by or adjacent to the drainage courses along or across said lots.
6. The City of Sherman will not be responsible for the maintenance and operation of said drainage ways or for the control of erosion.
7. The property shown on the plat hereon lies within a Zone "X" (areas determined to be outside 500–year floodplain) Designation, as shown on the Flood Insurance Rate Map for Grayson County, Texas and Incorporated Areas, Map No. 48181C0290 F, Revised Date: September 29, 2010.
8. Neither the City of Sherman nor the undersigned surveyor will be responsible for any damage, personal injury, or loss of life or property occasioned by flooding or flooding conditions.
9. The owners and builders must comply with all other state and federal regulations regarding developments of this type.

Job No. CGS021021

Helvey-Wagner Surveying, Inc.
222 W. Main St., Denison, Texas 75020
Phone (903) 463–6191
Email: kate@helveywagnersurvey.net
TBPELS Firm Registration No. 10088100

Owner:
Hope on Houston, Inc.
2610 Shenandoah Circle
Sherman, Texas 75092

Vicinity Map
(not to scale)



FIELD NOTES

SITUATED in the City of Sherman, County of Grayson, State of Texas, and being a part of the J. B. McAnair Survey, Abstract No. 763 and being part of Block 19, Chaffin's Addition, to the City of Sherman, Texas, as per plat of record in Volume 84, Page 505, Deed Records, Grayson County, Texas, said Part of Block 19 also being described as 1.263 acres (*Tract 1*), and 121.50 ft. by 150 ft. tract of land (*Tract 2*), conveyed by Correction General Warranty Deed from Wattman Holdings, LLC, to Hope on Houston, Inc., on April 16, 2020, recorded in Instrument No. 2020–10440, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows, to–wit:

BEGINNING at a "X" found in concrete on the South right–of–way line of Chaffin Street, a North line of said Block 19, at the Northwest corner of the Sheri Lynn Martinez and Santiago Vazquez Martinez "East 31.5 x 150.0 feet of Block 19", recorded in Volume 3028, Page 702, said Official Public Records, the Northeast corner of said Hope 1.263 ac. and the most Northern Northeast corner of the herein described tract, **SAID** "X" being South 74 deg. 41 min. 56 sec. West, 111.45 ft. from a 1 inch pipe found;

THENCE South 15 deg. 06 min. 44 sec. East, with an East line of said Hope 1.263 ac. and the West line of said Martinez tract, **PASSING** a railroad spike found at 0.67 ft., and continuing for a **TOTAL** distance of 150.79 ft. to a point that bears South 75 deg. 26 min. 09 sec. West, 1.80 ft. from a 3/8 inch rebar found at the Southwest corner of said Martinez tract, an angle point of said Hope Tract 2 and an Ell corner of both said Hope 1.263 ac. and the herein described tract;

THENCE North 74 deg. 41 min. 54 sec. East, with a North line of said Hope Tract 2 and the South line of said Martinez tract, a distance of 29.57 ft. to a 1/2 inch capped rebar set stamped (*RPLS 6578*) in the "apparent" East line of said Block 19 and the "apparent" West line of Block 22, said Chaffin's Addition, at the Northwest corner of tje Anastacio Garcia and Angela J. Trejo 100 x 150 feet tract of land, recorded in Volume 2305, Page 313, Real Property Records, Grayson County, Texas and the most Eastern Northeast corner of the herein described tract;

THENCE South 15 deg. 08 min. 07 sec. East, with the "apparent" East line of said Block 19 and the "apparent" the West line of said Block 22, a distance of 152.26 ft. to a 1/2 inch capped rebar set stamped (*RPLS 6578*) in the North right–of–way line of Houston Street, at the "apparent" Southeast corner of said Block 19 and the "apparent" Southwest corner of both said Block 22 and Garcia tract, at the Southeast corner of the herein described tract;

THENCE South 74 deg. 52 min. 05 sec. West, with the North right–of–way line of said Houston Street and a South line of both said Block 19 and said Hope Tract 2, a distance of 123.63 ft. to a 1/2 inch capped rebar found stamped (*RPLS 6585*) at the Southwest corner of said Hope Tract 2 and the most Southern Southeast corner of said Hope 1.263 ac., at an angle point of the herein described tract;

THENCE South 74 deg. 54 min. 39 sec. West, continuing with the North right–of–way line of said Houston Street and a South line of both said Block 19 and said Hope 1.263 ac., a distance of 178.56 ft. to a 1/2 inch capped rebar found stamped (*RPLS 6585*) at the intersection of the North line of said Houston Street with the East line of Willow Street, at the Southwest corner of all said Block 19, Hope 1.263 ac. and the herein described tract;

THENCE North 15 deg. 06 min. 14 sec. West, with the East right–of–way line of said Willow Street and a West line of said Hope 1.263 ac., a distance of 173.84 ft. to a "X" found in concrete at the Southwest corner of the Thomas L. Shields 53 x 102 feet tract of land (*Tract One*), recorded in Volume 4358, Page 102, said Official Public Records and the most Western Northwest corner of both said Hope 1.263 ac. and the herein described tract, **SAID** "X" being South 15 deg. 17 min. 42 sec. West, 53.52 ft. from a spike nail found;

THENCE North 74 deg. 34 min. 02 sec. East, with a North line of said Hope 1.263 ac. and the South line of said Shields Tract One, a distance of 102.27 ft. to a "X" found in concrete at the Southeast corner of said Shields Tract One, an Ell corner of both said Hope 1.263 ac. and the herein described tract;

THENCE North 15 deg. 12 min. 37 sec. West, with a West line of said Hope 1.263 ac. and the East line of said Shields Tract One, a distance of 127.69 ft. to a 2–1/2 inch pipe post found in the South right–of–way line of said Chaffin Street and the North line of said Block 19, at the Northeast corner of the Thomas L. Shields and Karen S. Shields 102 x 75 feet tract of land, recorded in Volume 4061, Page 297, said Official Public Records, the most Northern Northwest corner of both said Hope 1.263 ac. and the herein described tract, **SAID** post being North 74 deg. 51 min. 56 sec. East, 102.00 ft. from a 1/2 inch rebar found;

THENCE North 74 deg. 36 min. 37 sec. East, with the South right–of–way line of said Chaffin Street and the North line of both said Block 19 and said Hope 1.263 ac., a distance of 170.49 ft. to the **PLACE OF BEGINNING** and containing **1.695 ACRES and/or 73,850 SQUARE FEET** of land.

KNOW ALL MEN BY THESE PRESENTS:

THAT I, Kate A. Wagner, Registered Professional Land Surveyor, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision, in accordance with the subdivision regulations of the City of Sherman, Texas.

Kate A. Wagner, R. P. L. S. No. 6578 Date:

STATE OF TEXAS — KATE A. WAGNER — 6578 — REGISTERED PROFESSIONAL LAND SURVEYOR

I, Hope on Houston, Inc., sole owner of Hope on Houston Addition to the City of Sherman, Texas do hereby dedicate the streets, easements, alleys, rights–of–way, parks, school sites and other public places shown hereon to the public use forever.

Gail Utter, Authorized Representative for Hope on Houston, Inc.

Before me the undersigned, a notary public in and for said County and State, on this day personally appeared Gail Utter, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this _____ day of _____, 2021.

Notary Public, Grayson County, Texas

Sherman
CLASSIC TOWN. BROAD HORIZON.

This, the final plat of Hope on Houston Addition to the City of Sherman, Texas is hereby approved this _____ day of _____, 2021, by the Planning and Zoning Commission of the City of Sherman, Texas.

Chairman Secretary

This, the final plat of Hope on Houston Addition to the City of Sherman, Texas is hereby approved this _____ day of _____, 2021, by the City Council of the City of Sherman, Texas.

ACCEPTED BY THE CITY COUNCIL OF SHERMAN, TEXAS: _____
MAYOR, CITY OF SHERMAN, TEXAS DATE

The undersigned, the City Clerk of the City of Sherman, Texas, does hereby certify that the foregoing final plat of Hope on Houston Addition to the City of Sherman, Texas was submitted to the City Council of Sherman, Texas, on the _____ day of _____, 2021, and the City Council by formal action then and there accepted the dedication of streets, alleys, easements and public places, as shown and set forth in and upon said map or plat, and said City Council further authorized the Mayor to note the acceptance thereof by signing his name as hereinabove subscribed.

WITNESS MY HAND THIS _____ DAY OF _____, 2021, BY _____
CITY CLERK, CITY OF SHERMAN, TEXAS

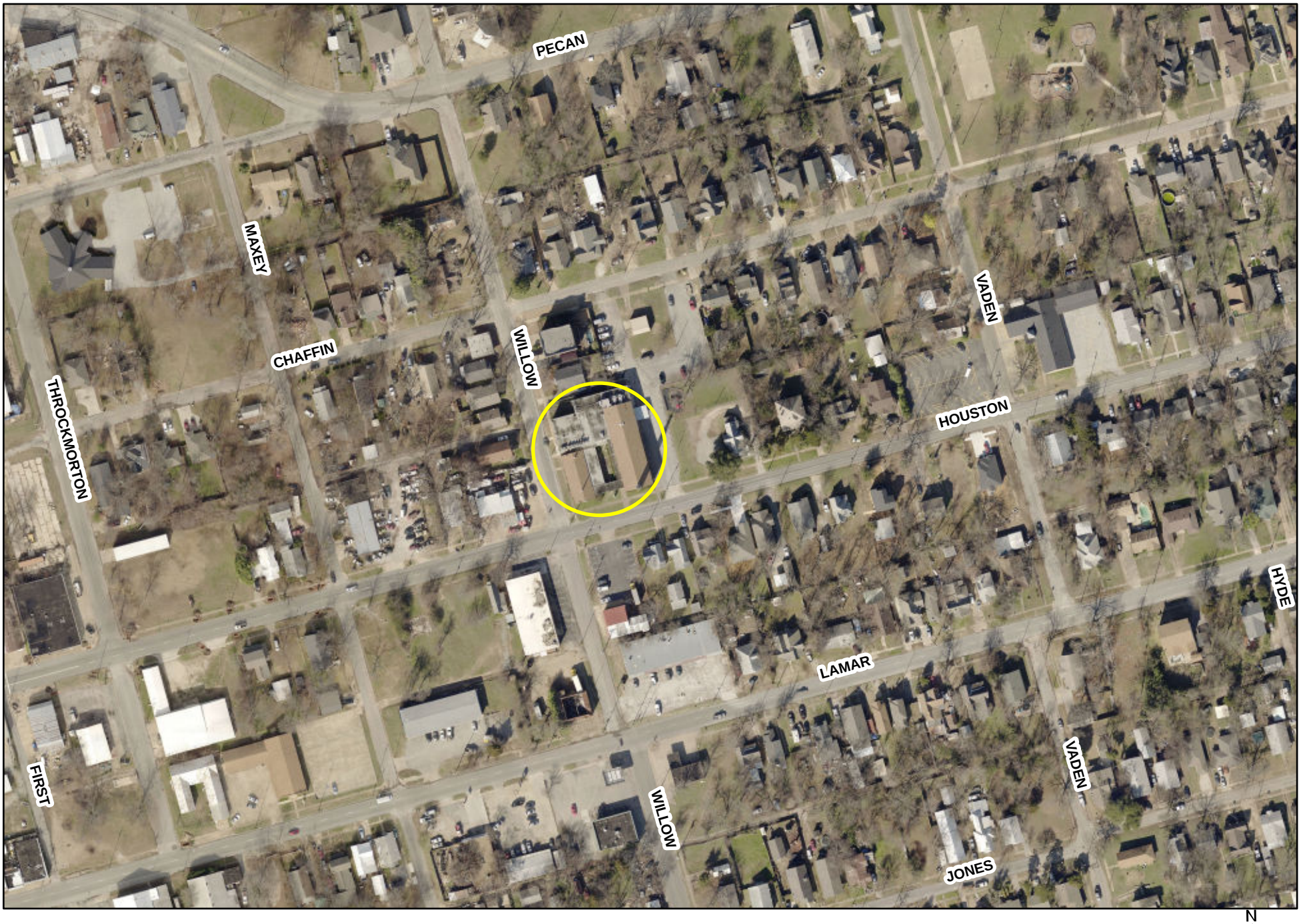
Hope on Houston Addition
(being a Replat of a part of Block 19, Chaffin's Addition)
to the
City of Sherman, Texas
1.695 Acres
in the
J. B. McAnair Survey
Abstract No. 763

Helvey-Wagner Surveying, Inc.
222 W. Main St., Denison, Texas 75020
Phone (903) 463–6191
Email: kate@helveywagnersurvey.net
TBPELS Firm Registration No. 10088100

Owner:
Hope on Houston, Inc.
2610 Shenandoah Circle
Sherman, Texas 75092

Z:\Shared Projects\Land Projects R2\Part–of–Block–19–Chaffins–Addition\Drawings\Replat.dwg 10/1/2021 9:20 AM

901 E. Houston



SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 8.**

Meeting Date: 01/17/2023

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 7020***

Abandoning One (1) Sixteen Foot (16') Utility Easement Located in Lots 1-4, Block 3 of Replat of Bright Star Addition, Volume 3, Page 80, Plat Records, Grayson County, Texas, and Being More Particularly Described on the Exhibit "A" Attached Hereto and Made a Part Hereof for all Purposes, which Utility Easements is Established in Volume 3, Page 80 of the Plat Records of Grayson County, Texas

Issue:

To consider the abandonment of one (1) 16' utility easement located within the property lines of Lots 1-4, Block 3 of Replat of Bright Star Addition to the City of Sherman, Texas

Background:

The easement, which is filed of record in Volume 3, Page 80 of the Plat Records of Grayson County, Texas, is not being utilized and is no longer deemed necessary. Said abandonment has been approved by franchise utilities.

Origination:

Jeff Plautz, Property Owner

Financial Consideration:

None

Staff Recommendation:

Staff recommends approval of one (1) 16' utility easement abandonment

Alternatives:

As may be directed by City Council

Attachments

Resolution No. 7020
Utility Easement Release - Lots 1-4, Blk 3, Bright Star Replat
Exhibit A as noted in both documents
Bright Star Addition Replat
Aerial Location Map

RESOLUTION NO. 7020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ABANDONING ONE (1) SIXTEEN FOOT (16') UTILITY EASEMENT LOCATED IN LOTS 1-4, BLOCK 3 OF REPLAT OF BRIGHT STAR ADDITION, VOLUME 3, PAGE 80, PLAT RECORDS, GRAYSON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED ON THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES, WHICH UTILITY EASEMENT IS ESTABLISHED IN VOLUME 3, PAGE 80 OF THE PLAT RECORDS OF GRAYSON COUNTY, TEXAS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council is of the opinion that the abandoning, vacating and closing of said utility easement as depicted on the attached map is in the public interest and is approved;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the one (1) sixteen foot (16') utility easement located in Lots 1-4, Block 3 of Replat of Bright Star Addition, Volume 3, Page 80, Plat Records, Grayson County, said easement being established in Volume 3, Page 80 of the Plat Records of Grayson County, Texas, as depicted in Exhibit "A" attached hereto, be and are hereby extinguished, vacated, closed, and permanently abandoned as an easement for public use.

SECTION 2. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Release and Abandonment of Easement in the same or substantially same form as the contract document attached hereto and incorporated herein for all purposes.

SECTION 3. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this 17th day of January 2023.

CITY OF SHERMAN, TEXAS

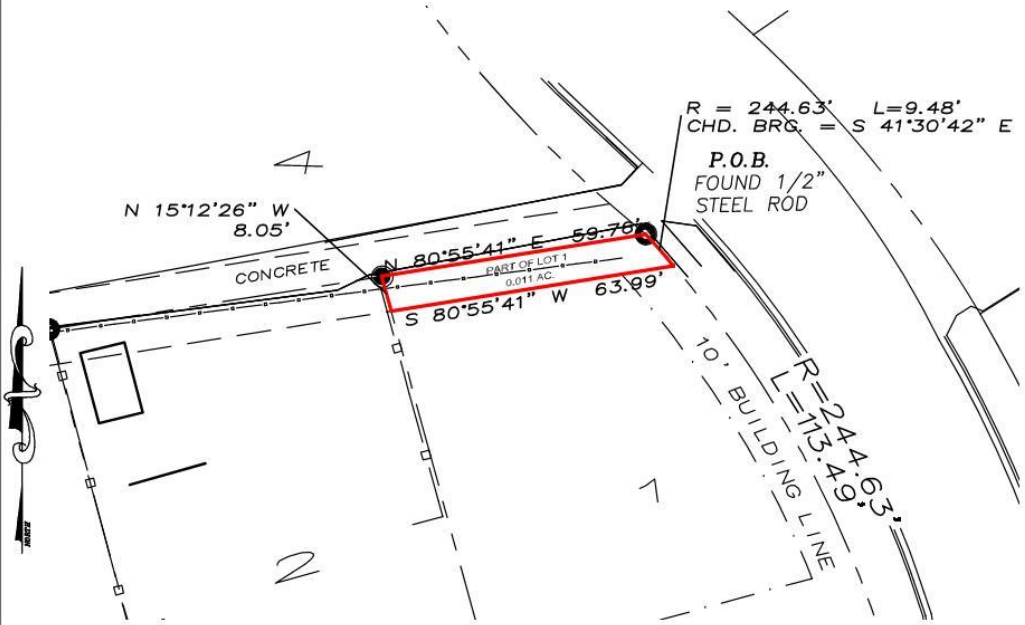
BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____
NAME: _____
CITY ATTORNEY



LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the J.B. McAnair Survey, Abstract No. 763, and being a part of Lot 1 in Block 3 of the Replat of Lot 1 Thru 5 Block 2 Inclusive and All of Block 3 Bright Star Addition, according to the plat thereof recorded in Volume 3, Page 80, Plat Records, Grayson County, Texas, and being described by metes and bounds as follows:

Beginning at a 1/2" steel rod found for the northeast corner of said Lot 1;
Thence with a non-tangent curve to the right having a radius of 244.63 feet, (chord bears South 41°30'42" East, a distance of 9.48 feet) an arc length of 9.48 feet to a point;
Thence South 80°55'41" West, crossing said Lot 1, a distance of 63.99 feet to point;
Thence North 15°12'26" West, a distance of 8.05 feet to a 1/2" steel rod found for the northwest corner of said Lot 1;
Thence North 80°55'41" East, a distance of 59.76 feet to the Point-of-Beginning and containing 0.011 acres of land, more or less.

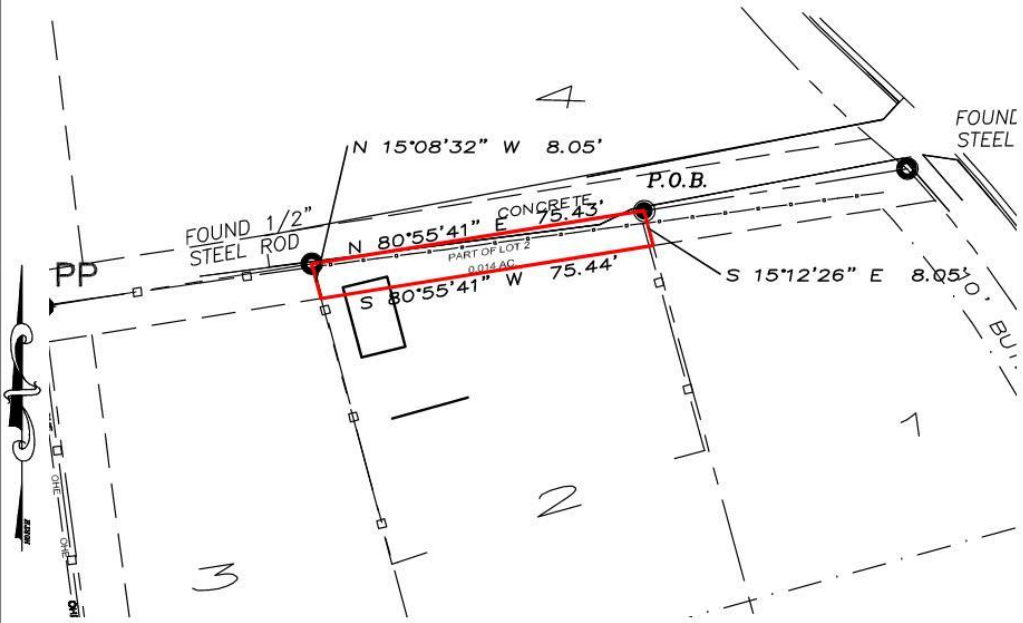
STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

UTILITY EASEMENT
ABANDONMENT
CITY OF SHERMAN, TX

UNDERWOOD
DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903) 465-2151 FAX: (903) 465-2152

DATE: 12/09/2022	Lot 1, Block 3, of the Replat of Lot 1 Thru Lot 5 Block 2 Inclusive and All of Block 3 Bright Star Addition
DRAWN BY: BNH	
APPROVED BY: DWU	
SCALE: 1" = 60'	



LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the J.B. McAnair Survey, Abstract No. 763, and being a part of Lot 2 in Block 3 of the Replat of Lot 1 Thru 5 Block 2 Inclusive and All of Block 3 Bright Star Addition, according to the plat thereof recorded in Volume 3, Page 80, Plat Records, Grayson County, Texas, and being described by metes and bounds as follows:

Beginning at a found 1/2" steel rod found for the northeast corner of said Lot 2;

Thence South 15°12'26" East, a distance of 8.05 feet to a point;

Thence South 80°55'41" West, crossing said Lot 2, a distance of 75.44 feet to a point;

Thence North 15°08'32" West, a distance of 8.05 feet to a 1/2" steel rod found for the northwest corner of said Lot 2;

Thence North 80°55'41" East, a distance of 75.43 feet to the Point-of-Beginning and containing 0.014 acres of land, more or less.

STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
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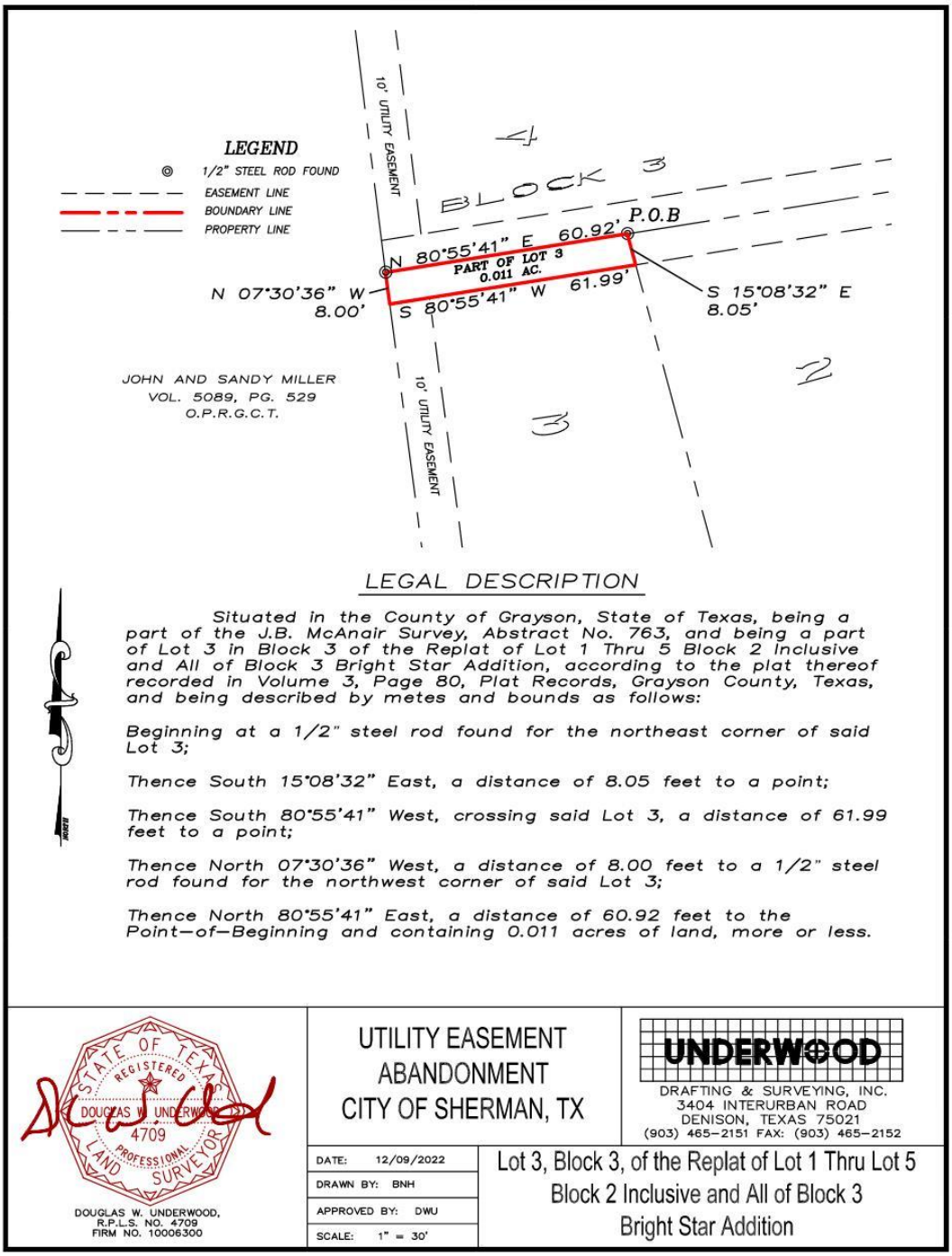
UTILITY EASEMENT
ABANDONMENT
CITY OF SHERMAN, TX

UNDERWOOD
DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903) 465-2151 FAX: (903) 465-2152

DATE: 12/09/2022	Lot 2, Block 3, of the Replat of Lot 1 Thru Lot 5 Block 2 Inclusive and All of Block 3 Bright Star Addition
DRAWN BY: BNH	
APPROVED BY: DWU	
SCALE: 1" = 30'	



LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the J.B. McAnair Survey, Abstract No. 763, and being a part of Lot 3 in Block 3 of the Replat of Lot 1 Thru 5 Block 2 Inclusive and All of Block 3 Bright Star Addition, according to the plat thereof recorded in Volume 3, Page 80, Plat Records, Grayson County, Texas, and being described by metes and bounds as follows:

Beginning at a 1/2" steel rod found for the northeast corner of said Lot 3;

Thence South 15°08'32" East, a distance of 8.05 feet to a point;

Thence South 80°55'41" West, crossing said Lot 3, a distance of 61.99 feet to a point;

Thence North 07°30'36" West, a distance of 8.00 feet to a 1/2" steel rod found for the northwest corner of said Lot 3;

Thence North 80°55'41" East, a distance of 60.92 feet to the Point-of-Beginning and containing 0.011 acres of land, more or less.

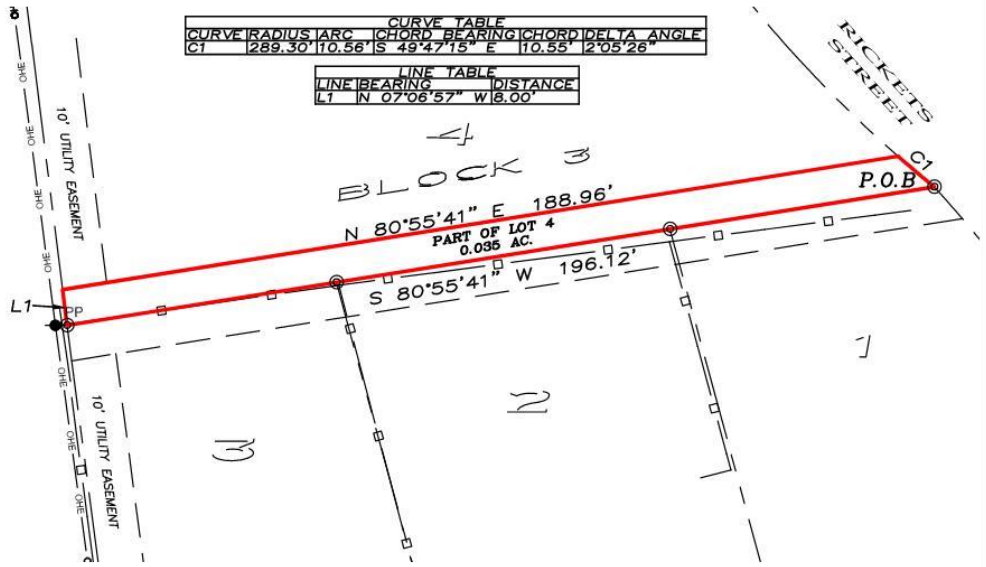
STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

UTILITY EASEMENT
ABANDONMENT
CITY OF SHERMAN, TX

UNDERWOOD
DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903) 465-2151 FAX: (903) 465-2152

DATE: 12/09/2022	Lot 3, Block 3, of the Replat of Lot 1 Thru Lot 5 Block 2 Inclusive and All of Block 3 Bright Star Addition
DRAWN BY: BNH	
APPROVED BY: DWU	
SCALE: 1" = 30'	



LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the J.B. McAnair Survey, Abstract No. 763, and being a part of Lot 4 in Block 3 of the Replat of Lot 1 Thru 5 Block 2 Inclusive and All of Block 3 Bright Star Addition, according to the plat thereof recorded in Volume 3, Page 80, Plat Records, Grayson County, Texas, and being described by metes and bounds as follows:

Beginning at a 1/2" steel rod found for the southeast corner of said Lot 4;

Thence South 80°55'41" West, a distance of 196.12 feet to a 1/2" steel rod found;

Thence North 07°06'57" West, a distance of 8.00 feet to a point;

Thence North 80°55'41" East, crossing said Lot 4, a distance of 188.96 feet to a point;

Thence with a non-tangent curve to the left having a radius of 289.30 feet, (chord bears South 49°47'15" East, a distance of 10.55 feet) an arc length of 10.56 feet to the Point-of-Beginning and containing 0.035 acres of land, more or less.

STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

UTILITY EASEMENT
ABANDONMENT
CITY OF SHERMAN, TX

UNDERWOOD
DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903) 465-2151 FAX: (903) 465-2152

DATE:	12/09/2022
DRAWN BY:	BNH
APPROVED BY:	DWU
SCALE:	1" = 30'

Lot 4, Block 3, of the Replat of Lot 1 Thru Lot 5
Block 2 Inclusive and All of Block 3
Bright Star Addition

RELEASE AND ABANDONMENT OF EASEMENT

DATE: _____ day of _____, 2022

PROPERTY:

BEING A 16-FOOT UTILITY EASEMENT IN LOTS 1-4, BLOCK 3 of REPLAT OF BRIGHT STAR ADDITION TO THE CITY OF SHERMAN, TEXAS, AS SHOWN BY PLAT OF RECORD IN VOLUME 3, PAGE 80, PLAT RECORDS, GRAYSON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED ON THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES, WHICH EASEMENTS ARE RECORDED IN VOLUME 3, PAGE 80 OF THE PLAT RECORDS OF GRAYSON COUNTY, TEXAS.

WHEREAS, the above described properties are located in Lots 1-4, Block 3 of Replat of Bright Star Addition, being established in Volume 3, Page 80 of the Plat Records of Grayson County, Texas.

WHEREAS, said property contains one (1) 16-foot Utility Easement as filed of record in Volume 3, Page 80 of the Plat Records of Grayson County, Texas and being more particularly described on the Exhibit "A" attached hereto and made a part hereof for all purposes.

WHEREAS, said Easement is not being utilized and the City of Sherman no longer deems said 16-Foot Utility Easement as a necessary Easement.

WHEREAS, the City of Sherman, Texas, does hereby abandon, relinquish and vacate its interest in and to the easement described above.

THE CITY OF SHERMAN, TEXAS

By: _____

Name: ROBBY HEFTON

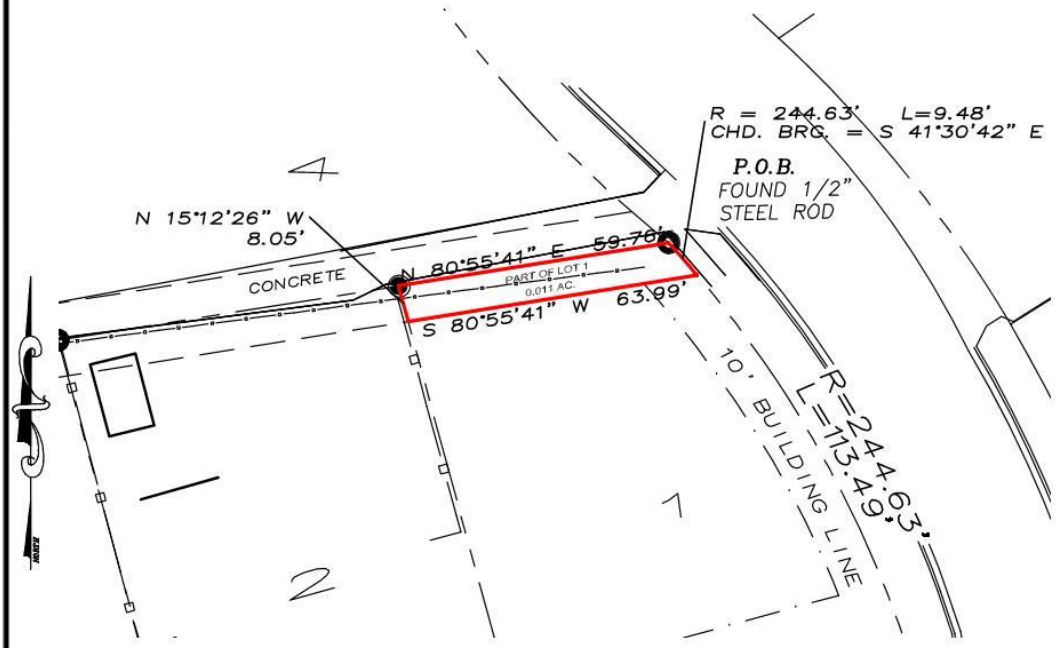
Title: City Manager

STATE OF TEXAS }
COUNTY OF GRAYSON }

This instrument was acknowledged before me on the _____ day of _____, 2023, by

ROBBY HEFTON, as City Manager of THE CITY OF SHERMAN, TEXAS.

_____
Notary Public – State of Texas



LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the J.B. McAnair Survey, Abstract No. 763, and being a part of Lot 1 in Block 3 of the Replat of Lot 1 Thru 5 Block 2 Inclusive and All of Block 3 Bright Star Addition, according to the plat thereof recorded in Volume 3, Page 80, Plat Records, Grayson County, Texas, and being described by metes and bounds as follows:

Beginning at a 1/2" steel rod found for the northeast corner of said Lot 1;
Thence with a non-tangent curve to the right having a radius of 244.63 feet, (chord bears South 41°30'42" East, a distance of 9.48 feet) an arc length of 9.48 feet to a point;
Thence South 80°55'41" West, crossing said Lot 1, a distance of 63.99 feet to point;
Thence North 15°12'26" West, a distance of 8.05 feet to a 1/2" steel rod found for the northwest corner of said Lot 1;
Thence North 80°55'41" East, a distance of 59.76 feet to the Point-of-Beginning and containing 0.011 acres of land, more or less.

STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

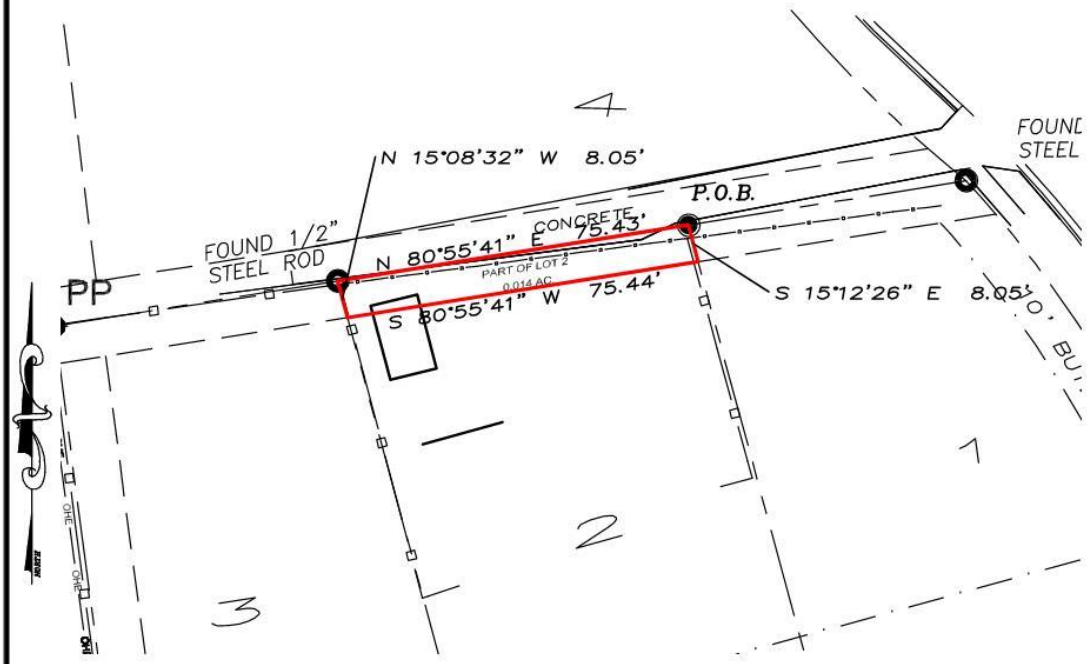
DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

UTILITY EASEMENT ABANDONMENT CITY OF SHERMAN, TX

UNDERWOOD
DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903) 465-2151 FAX: (903) 465-2152

DATE:	12/09/2022
DRAWN BY:	BNH
APPROVED BY:	DWU
SCALE:	1" = 60'

Lot 1, Block 3, of the Replat of Lot 1 Thru Lot 5 Block 2 Inclusive and All of Block 3 Bright Star Addition



LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the J.B. McAnair Survey, Abstract No. 763, and being a part of Lot 2 in Block 3 of the Replat of Lot 1 Thru 5 Block 2 Inclusive and All of Block 3 Bright Star Addition, according to the plat thereof recorded in Volume 3, Page 80, Plat Records, Grayson County, Texas, and being described by metes and bounds as follows:

Beginning at a found 1/2" steel rod found for the northeast corner of said Lot 2;

Thence South 15°12'26" East, a distance of 8.05 feet to a point;

Thence South 80°55'41" West, crossing said Lot 2, a distance of 75.44 feet to a point;

Thence North 15°08'32" West, a distance of 8.05 feet to a 1/2" steel rod found for the northwest corner of said Lot 2;

Thence North 80°55'41" East, a distance of 75.43 feet to the Point-of-Beginning and containing 0.014 acres of land, more or less.

STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

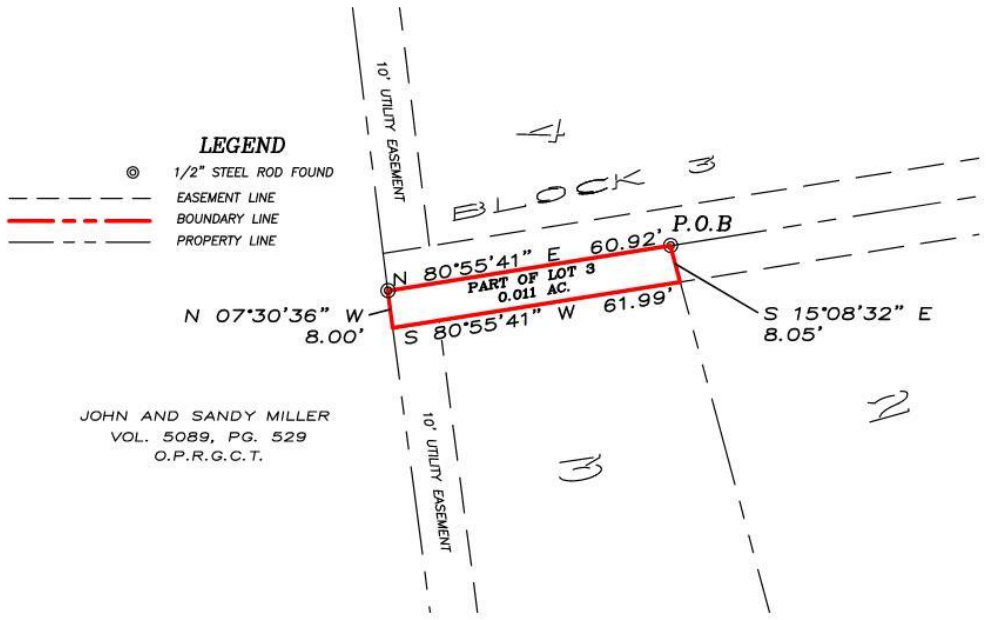
DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

UTILITY EASEMENT ABANDONMENT CITY OF SHERMAN, TX

UNDERWOOD
DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903) 465-2151 FAX: (903) 465-2152

DATE:	12/09/2022
DRAWN BY:	BNH
APPROVED BY:	DWU
SCALE:	1" = 30'

Lot 2, Block 3, of the Replat of Lot 1 Thru Lot 5 Block 2 Inclusive and All of Block 3 Bright Star Addition



LEGAL DESCRIPTION

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Beginning at a 1/2" steel rod found for the northeast corner of said Lot 3;

Thence South 15°08'32" East, a distance of 8.05 feet to a point;

Thence South 80°55'41" West, crossing said Lot 3, a distance of 61.99 feet to a point;

Thence North 07°30'36" West, a distance of 8.00 feet to a 1/2" steel rod found for the northwest corner of said Lot 3;

Thence North 80°55'41" East, a distance of 60.92 feet to the Point-of-Beginning and containing 0.011 acres of land, more or less.

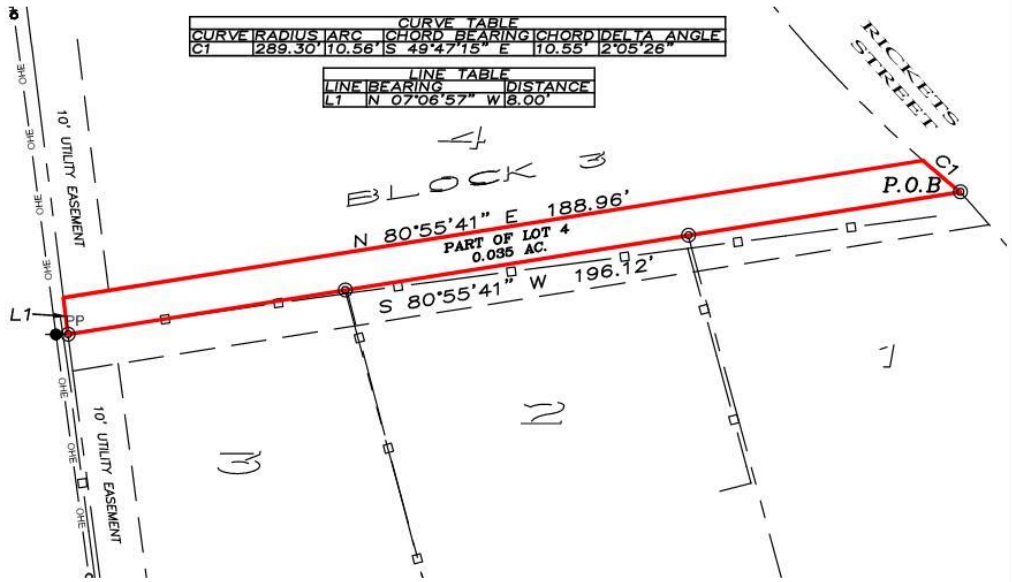
DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

UTILITY EASEMENT ABANDONMENT CITY OF SHERMAN, TX

UNDERWOOD
DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903) 465-2151 FAX: (903) 465-2152

DATE:	12/09/2022
DRAWN BY:	BNH
APPROVED BY:	DWU
SCALE:	1" = 30'

Lot 3, Block 3, of the Replat of Lot 1 Thru Lot 5 Block 2 Inclusive and All of Block 3 Bright Star Addition



LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the J.B. McAnair Survey, Abstract No. 763, and being a part of Lot 4 in Block 3 of the Replat of Lot 1 Thru 5 Block 2 Inclusive and All of Block 3 Bright Star Addition, according to the plat thereof recorded in Volume 3, Page 80, Plat Records, Grayson County, Texas, and being described by metes and bounds as follows:

Beginning at a 1/2" steel rod found for the southeast corner of said Lot 4;

Thence South 80°55'41" West, a distance of 196.12 feet to a 1/2" steel rod found;

Thence North 07°06'57" West, a distance of 8.00 feet to a point;

Thence North 80°55'41" East, crossing said Lot 4, a distance of 188.96 feet to a point;

Thence with a non-tangent curve to the left having a radius of 289.30 feet, (chord bears South 49°47'15" East, a distance of 10.55 feet) an arc length of 10.56 feet to the Point-of-Beginning and containing 0.035 acres of land, more or less.

STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

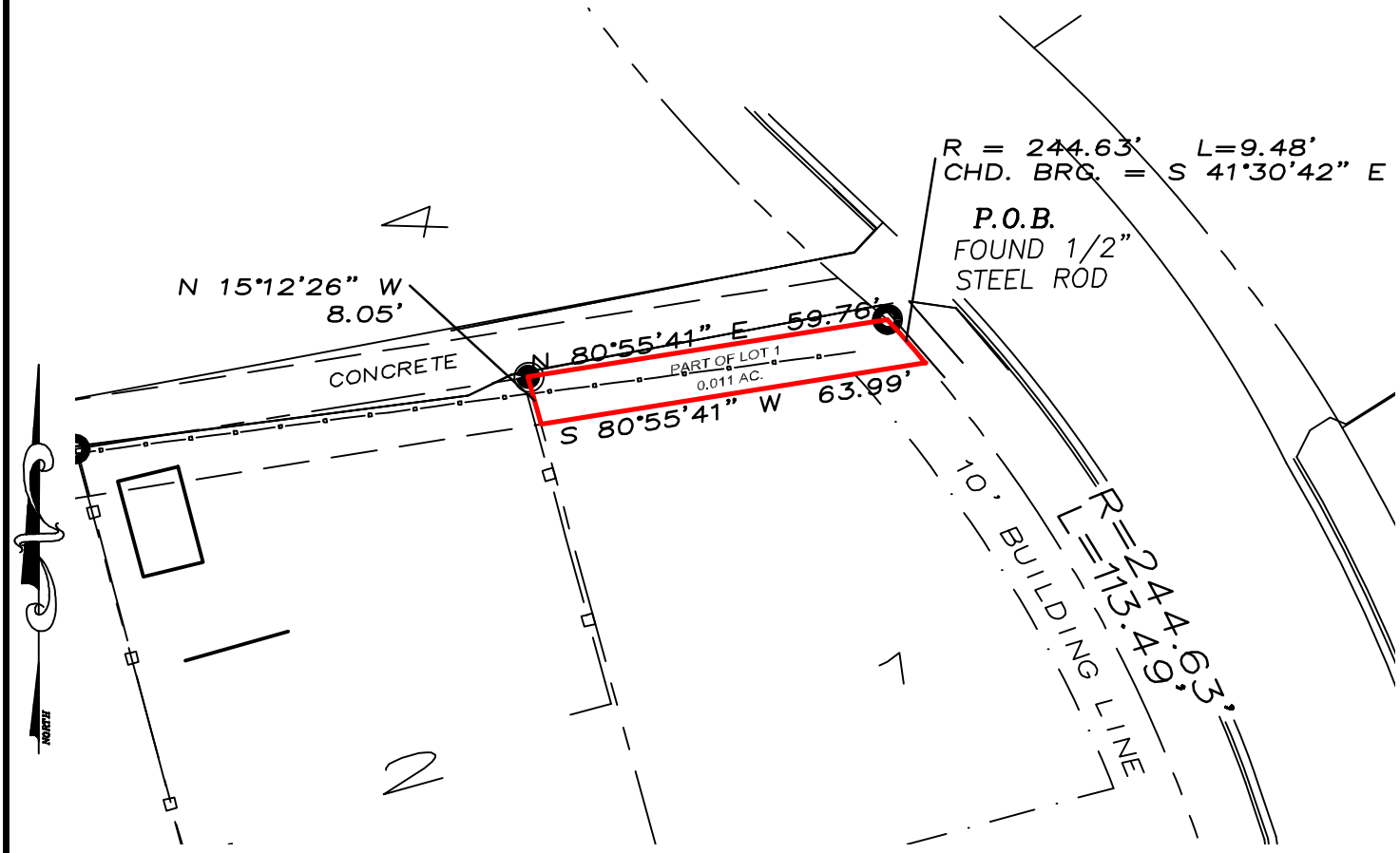
DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

UTILITY EASEMENT ABANDONMENT CITY OF SHERMAN, TX

UNDERWOOD
DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903) 465-2151 FAX: (903) 465-2152

DATE:	12/09/2022
DRAWN BY:	BNH
APPROVED BY:	DWU
SCALE:	1" = 30'

Lot 4, Block 3, of the Replat of Lot 1 Thru Lot 5 Block 2 Inclusive and All of Block 3 Bright Star Addition



LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the J.B. McAnair Survey, Abstract No. 763, and being a part of Lot 1 in Block 3 of the Replat of Lot 1 Thru 5 Block 2 Inclusive and All of Block 3 Bright Star Addition, according to the plat thereof recorded in Volume 3, Page 80, Plat Records, Grayson County, Texas, and being described by metes and bounds as follows:

Beginning at a 1/2" steel rod found for the northeast corner of said Lot 1;

Thence with a non-tangent curve to the right having a radius of 244.63 feet, (chord bears South 41°30'42" East, a distance of 9.48 feet) an arc length of 9.48 feet to a point;

Thence South 80°55'41" West, crossing said Lot 1, a distance of 63.99 feet to point;

Thence North 15°12'26" West, a distance of 8.05 feet to a 1/2" steel rod found for the northwest corner of said Lot 1;

Thence North 80°55'41" East, a distance of 59.76 feet to the Point-of-Beginning and containing 0.011 acres of land, more or less.

STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

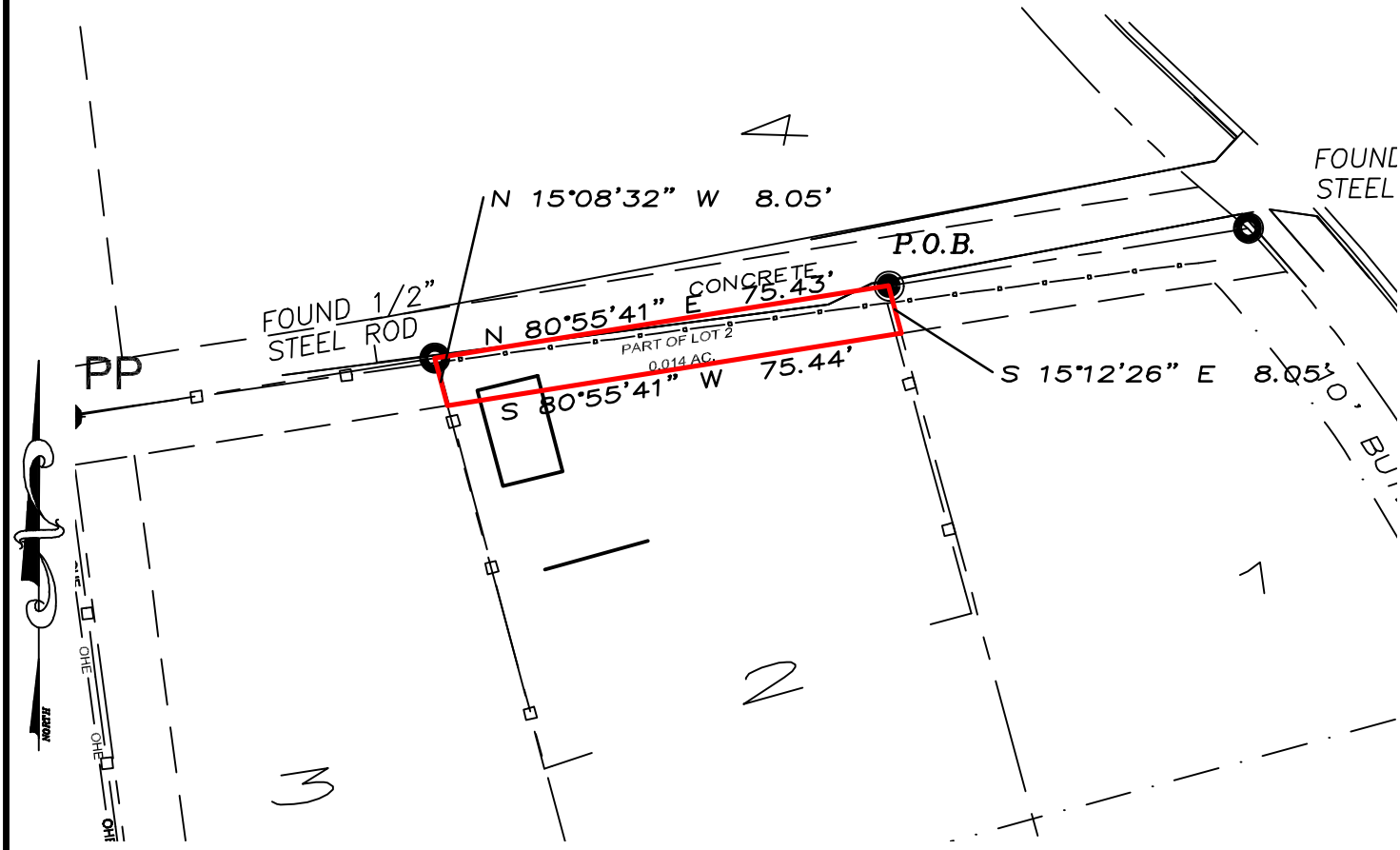
DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

UTILITY EASEMENT ABANDONMENT CITY OF SHERMAN, TX

UNDERWOOD
DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903) 465-2151 FAX: (903) 465-2152

DATE:	12/09/2022
DRAWN BY:	BNH
APPROVED BY:	DWU
SCALE:	1" = 60'

Lot 1, Block 3, of the Replat of Lot 1 Thru Lot 5 Block 2 Inclusive and All of Block 3 Bright Star Addition



LEGAL DESCRIPTION

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Beginning at a found 1/2" steel rod found for the northeast corner of said Lot 2;

Thence South 15°12'26" East, a distance of 8.05 feet to a point;

Thence South 80°55'41" West, crossing said Lot 2, a distance of 75.44 feet to a point;

Thence North 15°08'32" West, a distance of 8.05 feet to a 1/2" steel rod found for the northwest corner of said Lot 2;

Thence North 80°55'41" East, a distance of 75.43 feet to the Point-of-Beginning and containing 0.014 acres of land, more or less.

STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

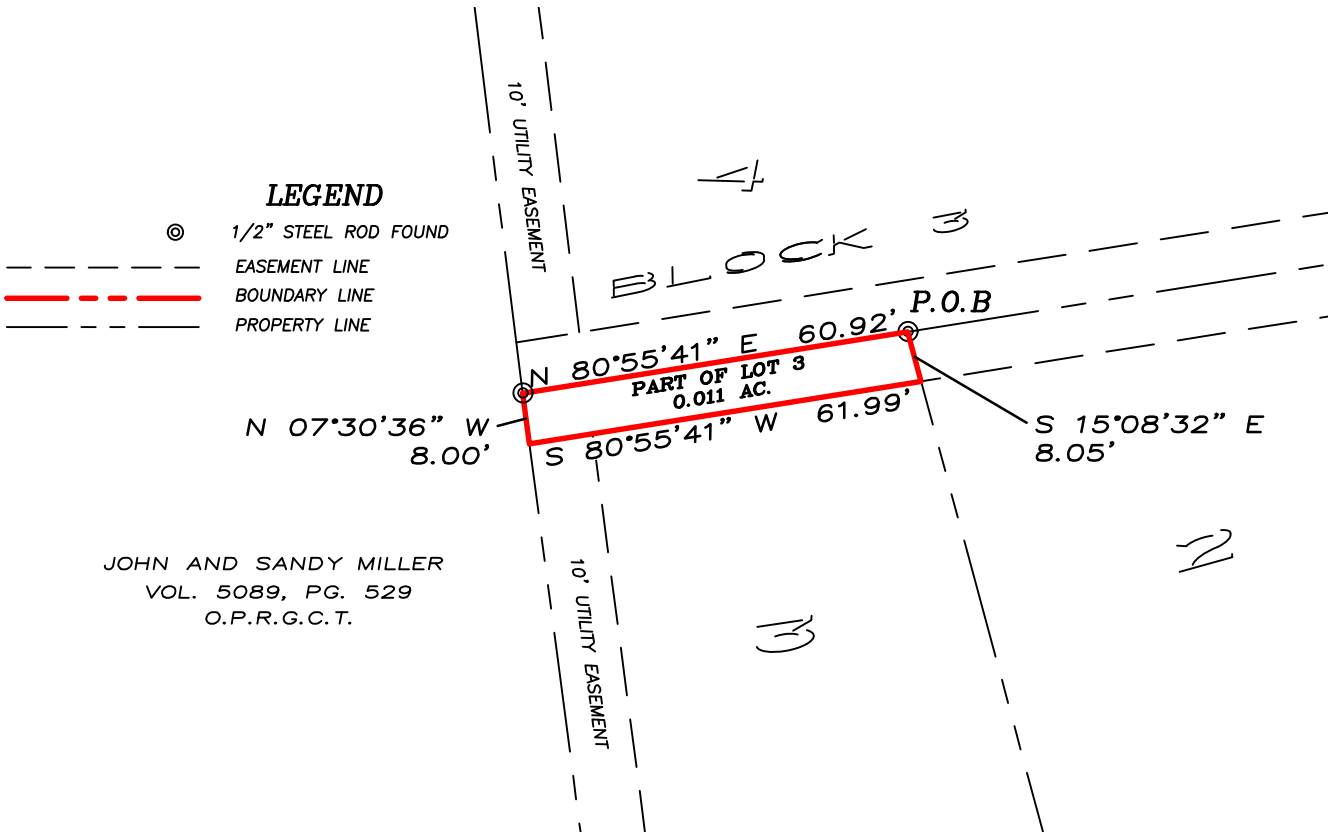
DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

UTILITY EASEMENT ABANDONMENT CITY OF SHERMAN, TX

UNDERWOOD
DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903) 465-2151 FAX: (903) 465-2152

DATE:	12/09/2022
DRAWN BY:	BNH
APPROVED BY:	DWU
SCALE:	1" = 30'

Lot 2, Block 3, of the Replat of Lot 1 Thru Lot 5 Block 2 Inclusive and All of Block 3 Bright Star Addition



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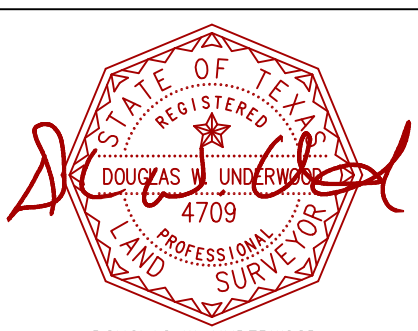
Thence South 80°55'41" West, crossing said Lot 3, a distance of 61.99 feet to a point;

Thence North 07°30'36" West, a distance of 8.00 feet to a 1/2" steel rod found for the northwest corner of said Lot 3;

Thence North 80°55'41" East, a distance of 60.92 feet to the Point-of-Beginning and containing 0.011 acres of land, more or less.



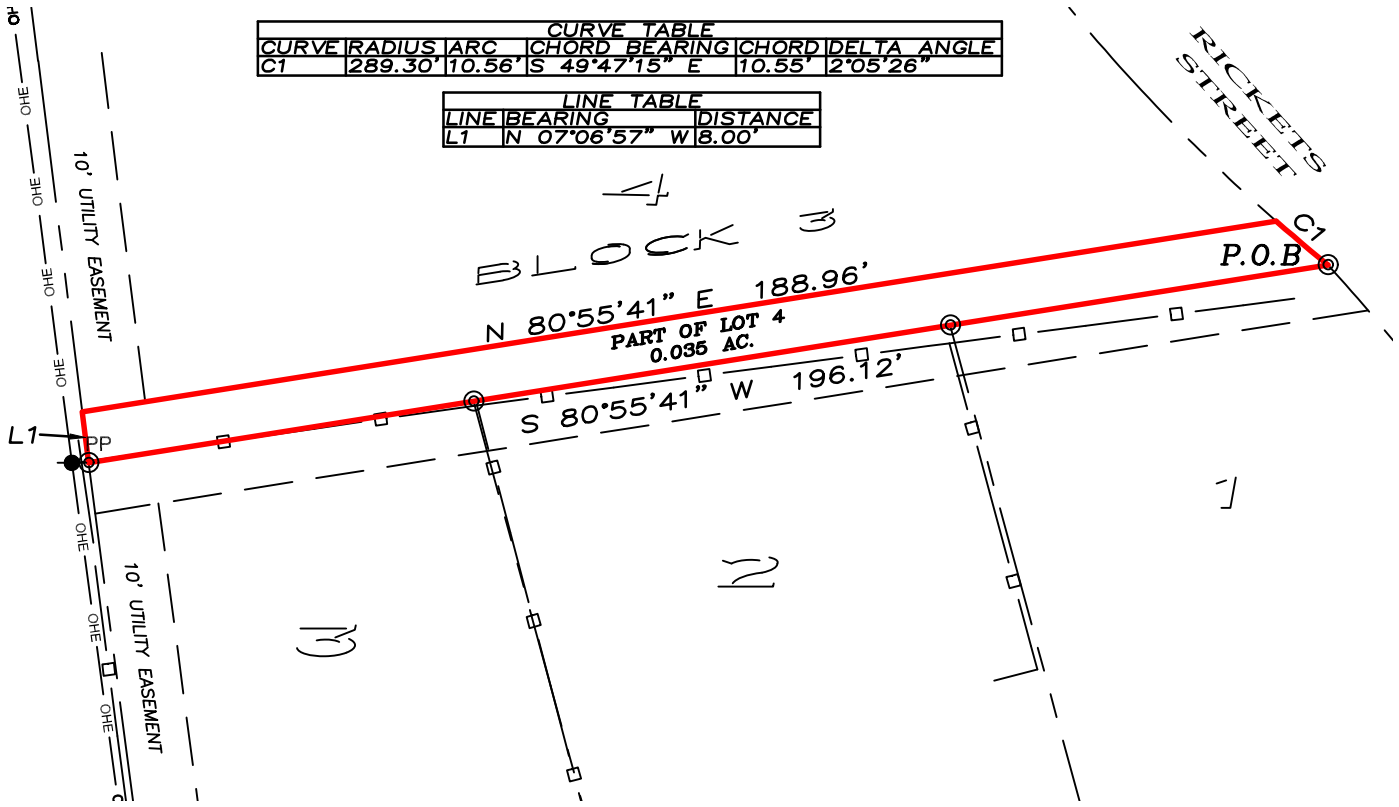
DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

UTILITY EASEMENT ABANDONMENT CITY OF SHERMAN, TX

DATE:	12/09/2022
DRAWN BY:	BNH
APPROVED BY:	DWU
SCALE:	1" = 30'

Lot 3, Block 3, of the Replat of Lot 1 Thru Lot 5 Block 2 Inclusive and All of Block 3 Bright Star Addition

UNDERWOOD
DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903) 465-2151 FAX: (903) 465-2152



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STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
FIRM NO. 10006300

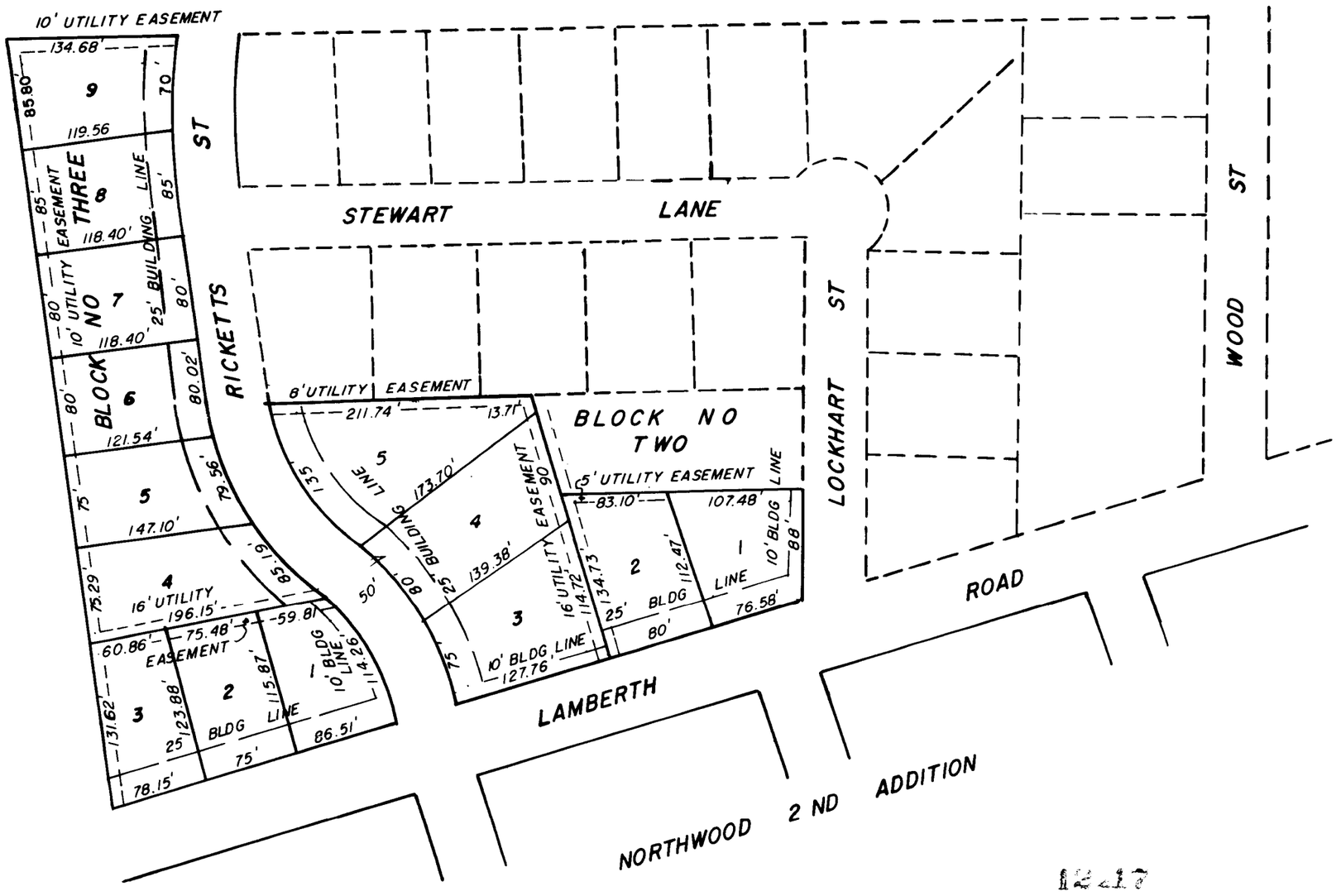
UTILITY EASEMENT ABANDONMENT CITY OF SHERMAN, TX

UNDERWOOD
DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903) 465-2151 FAX: (903) 465-2152

DATE:	12/09/2022
DRAWN BY:	BNH
APPROVED BY:	DWU
SCALE:	1" = 30'

Lot 4, Block 3, of the Replat of Lot 1 Thru Lot 5 Block 2 Inclusive and All of Block 3 Bright Star Addition

WINDSOR PLACE ADDITION



SCALE 1" = 100'

12417

REPLAT OF
LOT 1 THRU 5 BLOCK 2 INCLUSIVE AND ALL OF BLOCK 3
BRIGHT STAR ADDITION
TO
CITY OF SHERMAN, TEXAS

WE, JOHN F. STEWART AND WIFE, SUZZANNA STEWART HEREBY ADOPT THE ABOVE PLAT.

WITNESS OUR HAND THIS 28th DAY OF October, 1966.

John F. Stewart
JOHN F. STEWART

Suzzanne Stewart
SUZZANNE STEWART

THE STATE OF TEXAS
COUNTY OF GRAYSON

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED JOHN F. STEWART AND WIFE, SUZZANNA STEWART BOTH KNOWN TO ME TOBE THE PERSON WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND EACH ACKNOWLEDGED TO ME THAT HE OR SHE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED, AND THE SAID SUZZANNA STEWART, WIFE OF JOHN F. STEWART, HAVING BEEN EXAMINED BY ME PRIVATELY AND APART FROM HER HUSBAND, AND HAVING THE SAME FULLY EXPLAINED TO HER, SHE, THE SAID SUZZANNA STEWART, ACKNOWLEDGED SUCH INSTRUMENT TO BE HER ACT AND DEED, AND SHE DECLARED THAT SHE HAD WILLINGLY SIGNED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED, AND THAT SHE DID NOT WISH TO RETRACT IT.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 28 DAY OF October, 1966.

Opie Dean Armstrong
NOTARY PUBLIC IN AND FOR GRAYSON COUNTY, TEXAS

THE UNDERSIGNED, THE CITY CLERK OF THE CITY OF SHERMAN, HEREBY CERTIFIES THAT THIS REPLAT OF BRIGHT STAR ADDITION WAS SUBMITTED TO THE CITY COUNCIL ON THE 14th DAY OF Nov., 1966 AND THE CITY COUNCIL BY FORMAL ACTION THEN AND THERE AUTHORIZED THE MAYOR TO NOTE THE ACCEPTANCE THEREOF BY SIGNING HIS NAME AS HEREINABOVE SUBSCRIBED

J. Spears
CITY CLERK, CITY OF SHERMAN

APPROVED: [signature]
CHAIRMAN CITY PLANNING COMMISSION — 11-2-66 DATE

ACCEPTED: [signature]
MAYOR, CITY OF SHERMAN, TEXAS — 11-14-66 DATE

KNOW ALL MEN BY THESE PRESENTS

THAT I, JAME S. HART A REGISTERED PUBLIC SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM ACTUAL SURVEY MADE ON THE GROUND AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

James S Hart
JAMES S. HART — 10-26-66 DATE

STATE OF TEXAS
JAMES S. HART
359
REGISTERED
PUBLIC SURVEYOR

FILED FOR RECORD
November 15 1966
at 4:15 P M
Recorded in Vol. 3 Page 80
Plat Records
PAUL
County Clerk
By Barbara Pedigo

10334

144

Bright Star Addition

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 9.**

Meeting Date: 01/17/2023

Prepared By: Kevin Winkler, Public Works Manager

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 7021***

Authorizing the Purchase of 1,404 new 95 Gallon EG Carts that will be used by the Solid Waste Department.

Issue:

To consider approval of a resolution to purchase 1,404 new 95 Gallon EG Carts from Rehrig Pacific Company through Sourcewell for use within the Solid Waste Department.

Background:

The requested purchases will be used in the daily operations of the Solid Waste Department.

Origination:

Department of Public Works

Financial Consideration:

The new purchase will be purchased from Rehrig Pacific Company for $80,179.44. Funding for this purchase was appropriated in the fiscal year 2022-2023 Solid Waste Department Budget.

Staff Recommendation:

It is recommended that staff be authorized to purchase the new 95 Gallon EG Carts from Rehrig Pacific Company through Sourcewell.

Alternatives:

As may be recommended by the City Council

Attachments

Resolution No. 7021

Rehrig Pacific Quote

Sourcewell Agreement

RESOLUTION NO. 7021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF 1,404 95 GALLON EG CARTS FROM REHRIG PACIFIC COMPANY FOR THE SOLID WASTE DEPARTMENT THROUGH SOURCEWELL; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Manager be and is hereby authorized and directed to purchase from Rehrig Pacific Company through Sourcewell 1,404 new 95 Gallon EG Carts at a total price of Eighty Thousand One Hundred Seventy-Nine Dollars and Forty Four Cents ($80,179.44). Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2022-2023 budget.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 17th day of January 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Rehrig Pacific Company
SINCE 1913

Locations:
1000 Raco Court, Lawrenceville, GA 30046
625 West Mockingbird Lane, Dallas, TX 75247
1738 W. 20th St, Erie, PA 16502
7452 Presidents Dr, Orlando, FL 32809
8875 Commerce Dr, DeSoto, KS 66018
7600 100th St, Pleasant Prairie, WI 53158
4010 East 26th St, Los Angeles, CA 90058

Proposal

Proposal #: 205335 01032023

January 4, 2023

Bill-to: 205335	Ship-to: 218206
City of Sherman **PO Box 1106** **Sherman, TX 75091**	**City of Sherman** **811 S East St** **Sherman, TX 75090**
Billing Contact:	**Shipping Contact:**
Name: Jimmy Mrozinski **Phone:** **E-mail: jimmym@cityofsherman.com**	**Name: Same** **Phone: Same** **E-mail: Same**

ITEM DESCRIPTION	QUANTITY	UNIT PRICE	EXTENDED PRICE
Rollout Cart Type: 95 Gallon EG Cart - 535355 **Body Color Requested:** Kelly Green **Lid Color Requested:** Kelly Green **Wheels / Casters:** 10" Snap on with Intergrated Spacer **Artwork:**	1,404	$56.36	$ 79,129.44

Is Product Taxable?	No	**Subtotal =**	**$ 79,129.44**
Is Freight taxable?	No	**Tax on Product =**	
Tax Rate:	8.25%	**Truckload Freight Rate(2 FTL) =**	**1,050.00**
Terms:	Net 30 Days	**Tax on Freight =**	
		Total =	**$ 80,179.44**

ADDITIONAL INFORMATION:

Contract Options:	None
Ship From:	95G from Dallas, TX facility delivery
Leadtime:	Delivery 1 load in April and 1 load in July 2023
Warranty:	10 year unprorated warranty
Quote Valid:	30 Days
Taxes:	All applicable taxes shall be paid by the Buyer unless a proper exemption is provided and validated.

Omnia/Sourcewell

***** All Credit Card transactions are subject to a 2% processing fee.**

PRESENTED BY:	ACCEPTED BY:
Rehrig Pacific Company *G'Anna Parkey* 1/4/2023 G'Anna Parkey — Date Environmental Sales Representative Cell: 830-308-9020 gparkey@rehrig.com	Sign and Print Name — Date Title:_____

To initiate order, please call or send signed proposal via email to Presented By representative.

VH 26034
P.R.# 23-00188
1-6-23
Sourcewell Coop # 041521 REM

NJPA

National Joint Powers Alliance®

Official

CERTIFICATE OF MEMBERSHIP

City of Sherman

Member # 2,440

This certificate entitles the entity named above the opportunity to puchase off of nationally, competitively bid contracts. The entity will save time by using pre-bid contracts, save money by leveraged volume pricing and obtain quality products from nationally acclaimed vendors.

Duff Erholtz, Membership Manager

Competitively Bid National Cooperative Contract Solutions

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 10.**

Meeting Date: 01/17/2023

Prepared By: Billy Hartsfield, Acting Fire Chief

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 7022***

Authorizing Execution of an Agreement for Fire Protection Services between Grayson County, Texas and the City of Sherman, Texas for the Period of October 1, 2022 through June 30, 2023

Issue:

To consider approval of an agreement between the City of Sherman and Grayson County regarding firefighting services in Grayson County

Background:

The Sherman Fire Department provides fire protection for certain areas of Grayson County, in what is usually an annual agreement. This agreement covers a period only through June 30, 2023 because staff will be working with the newly elected County officials on a contract that more reasonably reflects the scope of and compensation to the City for providing these services.

Origination:

Grayson County and the City of Sherman

Financial Consideration:

The City will receive $10,612.00 each month during the period beginning October 1, 2022 and ending June 30, 2023. The total amount due to the City for this nine-month period will be $95,508.00.

Staff Recommendation:

It is recommended that the Council approve the agreement to provide firefighting services to the County.

Alternatives:

As directed by the Council

Attachments

Resolution No. 7022

Agreement

RESOLUTION NO. 7022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT FOR FIRE PROTECTION SERVICES BETWEEN GRAYSON COUNTY, TEXAS AND THE CITY OF SHERMAN, TEXAS FOR THE PERIOD OF OCTOBER 1, 2022 THROUGH JUNE 30, 2023; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the Mayor be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an Agreement for Fire Protection Services between Grayson County and the City of Sherman for the period of October 1, 2022 through June 30, 2023, pursuant to the terms and provisions of the contract document attached hereto and made a part hereof for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 17th day of January 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM
AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

STATE OF TEXAS §
§ *FISCAL YEAR 2023*
COUNTY OF GRAYSON §

AGREEMENT FOR FIRE PROTECTION SERVICES BETWEEN GRAYSON COUNTY, TEXAS AND THE CITY OF SHERMAN, TEXAS

WHEREAS, this Agreement is made between Grayson County, Texas ["COUNTY"] and the City of SHERMAN, Texas ["CITY"] under and pursuant to the Interlocal Cooperation Act, Chapter 791, Texas Government Code and under Section 352 of the Texas Local Government Code;

WHEREAS, COUNTY and CITY represent that each is independently authorized to perform the functions contemplated by this Agreement;

WHEREAS, the COUNTY currently has a need for fire protection for Grayson County residents who live in portions of the COUNTY outside the municipalities;

WHEREAS, each party has sufficient funds available from current revenues to perform the functions contemplated by this Agreement; and

NOW, THEREFORE, in consideration of the recitals, mutual benefits and promises each to the other made herein, the parties named above do hereby agree as follows:

PUBLIC PURPOSE

The purpose of this Agreement is to provide public fire protection services within the area of the COUNTY that lies outside the boundaries of any municipal government, subject to the terms of this Agreement. The COUNTY has no authority to provide fire protection within the territorial limits of incorporated municipalities and by this Agreement does not attempt to usurp the authority of municipalities to manage, regulate and provide fire protection and emergency response services within their boundaries.

CITY OBLIGATIONS

The CITY, as part of this Agreement, and conditioned on the payment by COUNTY of any and all sums called for under this Agreement, agrees that:

(A) The CITY's fire department will provide fire protection services for all persons and property within the unincorporated area of said COUNTY that lies within the CITY's designated primary service area as set out in the map attached to this Agreement as Exhibit "A" and incorporated

herein by reference. Additionally, the CITY's Fire Department agrees that it shall respond to all mutual aid calls from any other fire department in Grayson County for fire protection services at any location within the unincorporated area of the COUNTY upon request of other fire department or upon request of the Grayson County Judge or Emergency Management Coordinator. Said request may be made on behalf of any of these authorized agents by telephone or through the Grayson County Sheriff's Office Communications Center.

(B) The CITY's Fire Department shall use reasonable diligence and effort to provide the fire protection services it has contracted to provide by this Agreement and to provide immediate and direct supervision of the CITY's Fire Department members, volunteers, employees, agents, contractors, sub-contractors, and/or laborers, if any, in the furtherance of the purposes, terms, and conditions of this Agreement. Notwithstanding any statement to the contrary in this Agreement, the services to be provided under this Agreement shall not be arbitrarily withheld, but it is understood by the parties that unforeseen circumstances may arise which prevent CITY from providing the services at a particular time. CITY shall restore such services with all reasonable speed to the same level which existed prior to such unforeseen circumstances arising, if such should arise. It is recognized that CITY has the primary and principal duty and responsibility of rendering services to citizens of the City of Sherman. In the performance of the services under this Agreement, CITY shall have the sole responsibility and discretion to determine the priorities in the dispatching and use of units, equipment and personnel. The COUNTY understands that the availability of CITY's units, equipment and personnel will be subject to the demands within the City of Sherman, which will in all cases take priority, as well as other existing interlocal and mutual aid agreements.

(C) The CITY's Fire Department agrees to cause its members and personnel providing fire protection services in performance of this Agreement, when performing said services, to conduct themselves in a professional manner and to comply with all applicable laws, regulations and standards. All paid fire fighters must comply with all requirements of the Texas Commission on Fire Protection. All fire fighters, whether paid or volunteer, must be properly trained and equipped to perform fire protection duties as determined by applicable laws, regulations and standards, including local departmental regulations and standards. The CITY's Fire Department agrees to maintain all equipment necessary for the performance of this Agreement in good repair. Radio communications will be conducted in accordance with any rules, procedures or directives of the Grayson County Sheriff and/or the Grayson County Emergency Management Coordinator.

(D) The CITY's Fire Department shall cooperate and coordinate with the Grayson County Fire Marshal pursuant to the provisions of the Local Government Code, Chapter 352.

(E) Reserved.

(F) Upon request from the Grayson County Judge, his designee or the Grayson County Emergency Management Coordinator, the CITY's Fire Department shall:

a. Cooperate in a coordinated response, or prioritization of assets, during a locally declared disaster;

b. Respond to reasonable data requests relevant to services provided under this Agreement;

c. Consider participating in at least one exercise, per fiscal year, if requested by the Grayson County Office of Emergency Management;

d. Participate in local planning, briefings or trainings as requested by the Grayson County Fire Marshal or Grayson County Emergency Management Coordinator; and

e. Participate in After Action Reviews as requested by the Grayson County Emergency Management Coordinator of emergency incidents involving a response of the CITY's Fire Department in the unincorporated area pursuant to this Agreement. Participation shall be defined to include participation by personnel actually involved in the incident; and

f. Provide current contact information for the Chief and Assistant Chief of the CITY's Fire Department, to include active email addresses and telephone contact information, for use by the Grayson County EOC, Sheriff's Office Communication Center and Fire Marshal.

(G) The CITY's Fire Department warrants that in carrying out the terms of this Agreement, no person under the age of eighteen years will be utilized in the performance of the services to be provided under this Agreement.

(H) The CITY's Fire Department shall comply with any rules, procedures or directives of the Grayson County Sheriff and/or Grayson County Fire Marshal for determining which fires warrant investigation and shall cooperate with any such investigation made by the appropriate County Official or the designated agent of the County Sheriff, Grayson County Fire Marshal, State Fire Marshal, and/or other law enforcement agencies or their designees.

(I) The books and records maintained in operation of the CITY's Fire Department shall be open to inspection by the COUNTY or its designated representative during normal business hours, upon reasonable notice.

(J) The CITY's Fire Department shall file a TXFIRS report with the State Fire Marshal's Office within two weeks of the end of the month that an incident occurred. The Grayson County Emergency Management Coordinator is authorized to review all fire incident reports filed by the CITY Fire Department with the State Fire Marshal's Office.

(K) The CITY's Fire Department shall file an incident report with the Texas Interagency Coordination Center (Texas A&M Forest Service) via Texas FireConnect Portal, or any successor system, for each wildland fire incident to which the department responded within fourteen (14) days of the incident.

(L) The CITY's Fire Department shall adopt, and take all necessary steps to implement, the National Incident Management System (NIMS) at the local level. NIMS compliance for the term of this Agreement must be achieved by completing required actions as outlined by FEMA, the Texas Forest Service and the Texas Division of Emergency Management. NIMS compliance shall be demonstrated by:

a. Completion and certification of NIMS compliance via any tool requested by the Grayson County Office of Emergency Management in writing within thirty (30) days of the request;

b. Verification of NIMS compliance by providing information and records upon thirty days request of the Grayson County Judge or Emergency Management Coordinator.

(M) The CITY's Fire Department acknowledges and understands that it is anticipated that the COUNTY may require in future Agreements that any fire department which is not also a licensed emergency medical service provider maintain a "current" status throughout the term of future Agreements as a First Responder Organization (FRO) as defined by the Texas Administrative Code 157.14. *This is not a requirement of this Agreement at the time of its execution and this Paragraph is provided for planning and notice only.*

(N) The CITY's Fire Department certifies that it: [*check one]*

☐ IS a First Responder Organization as defined by the Texas Administrative Code 157.14?
☐ IS NOT a First Responder Organization as defined by the Texas Administrative Code 157.14?
☐ IS a licensed emergency medical service provider?

CONSIDERATION

For the services provided above, the COUNTY shall provide to the CITY:

(1) The sum of $10,612.00 per month, during the term of this Agreement, which is due and payable by the
10th day of each month. The first payment shall be due on or before October 10, 2022.

(2) Recovery of any additional sums or consideration *from County residents* by the CITY for response to grass or wildfire is strictly prohibited by this Agreement, except for responses resulting from the intentional act or omission of a County resident or other person, for which the CITY is entitled to seek recovery of additional sums or consideration. Inasmuch as the CITY acts as the County's agent for response, the CITY agrees to provide the fire protection services for grass or wildfire for the consideration in Paragraph 1 above. Except as otherwise provided above, this provision is included to prohibit the recovery of additional compensation directly from county residents by CITY only and shall not preclude the COUNTY and CITY from seeking state or federal assistance in the event of disaster or extraordinary response due to extreme wildfire threat.

(3) In addition to all available remedies pursuant to the default and termination provisions of this Agreement, the Parties agree that the COUNTY may withhold payment of any sums due and payable as set out in Paragraph 1 above upon written notice of failure of the CITY to perform the services contemplated in this Agreement until such deficiency is cured.

NOTICE OF EFFECT OF NONAPPROPRIATION

If, for any fiscal year, the Grayson County Commissioners Court does not authorize funds in amounts sufficient to pay or perform its obligations under this Agreement, the County shall endeavor to provide thirty (30) days notice. If funds are not authorized, this Agreement shall be null and void for the COUNTY fiscal year for which funds are not appropriated and any future fiscal years. Notwithstanding the foregoing, COUNTY represents and warrants to City that the Grayson County Commissioners Court has authorized funds in amounts sufficient to pay or perform its obligations under this Agreement.

GENERAL APPORTIONMENT OF RESPONSIBILITY AND IMMUNITY; AGENCY

Pursuant to Section 352.004 of the Texas Local Government Code, the act of a person or an employee of a municipality providing fire protection services pursuant to this Agreement in the unincorporated areas of the COUNTY, is considered to be the act of an agent of the COUNTY. A municipality is not liable for the reasonable acts of its employee in fighting fires outside the municipality under this Agreement.

The COUNTY and the CITY understand and agree that Section 352.004 of the Texas Local Government Code applies to the services performed by the CITY for the COUNTY under this Agreement and that when the CITY is engaged in the scope of its duty to provide fire protection services in any part of the area of the COUNTY that lies outside the limits of any municipality, the CITY acts as an agent of COUNTY to the *limited* extent said law mandates. However, it is understood that the CITY is not an agent of the COUNTY for any other purpose.

The fact that the COUNTY and the CITY accept certain responsibilities relating to the rendition of fire protection services under this Agreement as part of their responsibility for providing protection for the public health makes it imperative that the performance of these vital services be recognized as a governmental function and that the doctrine of governmental immunity shall be, and is hereby, invoked to the extent permitted by law. Neither the CITY, nor the COUNTY waive, nor shall be deemed to have hereby waived, any immunity or defense that would otherwise be available to it against claims arising from the exercise of government powers and functions.

DEFAULT

In the event either party shall fail to keep, observe or perform any provision of this Agreement, the breaching party shall be deemed in default. If such default shall continue for a period of thirty days after notice thereof by the non-breaching party to the other, then the non-breaching party shall be entitled to all available options under the Termination provisions of this Agreement.

EFFECTIVE DATE, TERM AND RENEWAL

The effective date of this Agreement shall be October 1, 2022, and this Agreement shall expire at midnight on June 30, 2023.

The COUNTY is expressly prohibited by the Constitution of the State of Texas from creating a debt without providing for a tax to pay the debt. "Debt" means any obligation to be paid for with future rather than current revenues. Any Agreement that would provide for automatic renewal of this Agreement would necessarily provide for payments that would have to be made from future revenues. Without a special tax, there can be no lawful automatic renewal of this Agreement. Instead, it is understood by both Parties that a new contract must be executed for each fiscal year. The fiscal year of the COUNTY is from October 1 through September 30 of the next calendar year.

Accordingly, this Agreement contains no automatic renewal provisions. It is agreed that continuation of fire protection services between the COUNTY and the CITY must be by execution of a new contract for each fiscal year on or before October 1 of the fiscal year covered by the contract that is expiring.

AUTHORITY TO CONTRACT

Each party has the full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

GOVERNING LAW/VENUE

This Agreement shall be interpreted in accordance with the laws of the State of Texas and Grayson County is the proper venue for any action regarding this Agreement.

ENTIRE AGREEMENT

This Agreement represents the entire Agreement of the Parties and supersedes any verbal or written representations of, to or by the Parties to each other.

AMENDMENT

If the Parties desire to modify this Agreement during its term, any modifications may be either incorporated herein by written amendment or set forth in an entirely new written agreement. Any modifications must be properly approved and signed by authorized representatives of the Parties.

TERMINATION

By Mutual Agreement: This Agreement may be terminated by mutual agreement of the CITY and the COUNTY, as evidenced by written termination agreement.

For Nonappropriation of Funds: As mentioned above, if the County does not authorize funds necessary for performance of the obligations under this Agreement, the County may terminate this Agreement.

By Either Party: This Agreement may be terminated at any time for convenience or fault upon sixty (60) days written notice to the other party.

NOTICES

By City to County:

Any notice permitted or required to be given to the COUNTY hereunder must be in writing and mailed by United States Postal Service, first class mail AND Certified Mail, Return Receipt Requested, postage prepaid and addressed to:

Grayson County Judge
100 W. Houston, Suite 15
Sherman, Texas 75090

By County to City:

Any notice permitted or required to be given to the CITY hereunder must be in writing and mailed by United States Postal Service, first class mail AND Certified Mail, Return Receipt Requested, postage prepaid and addressed to:

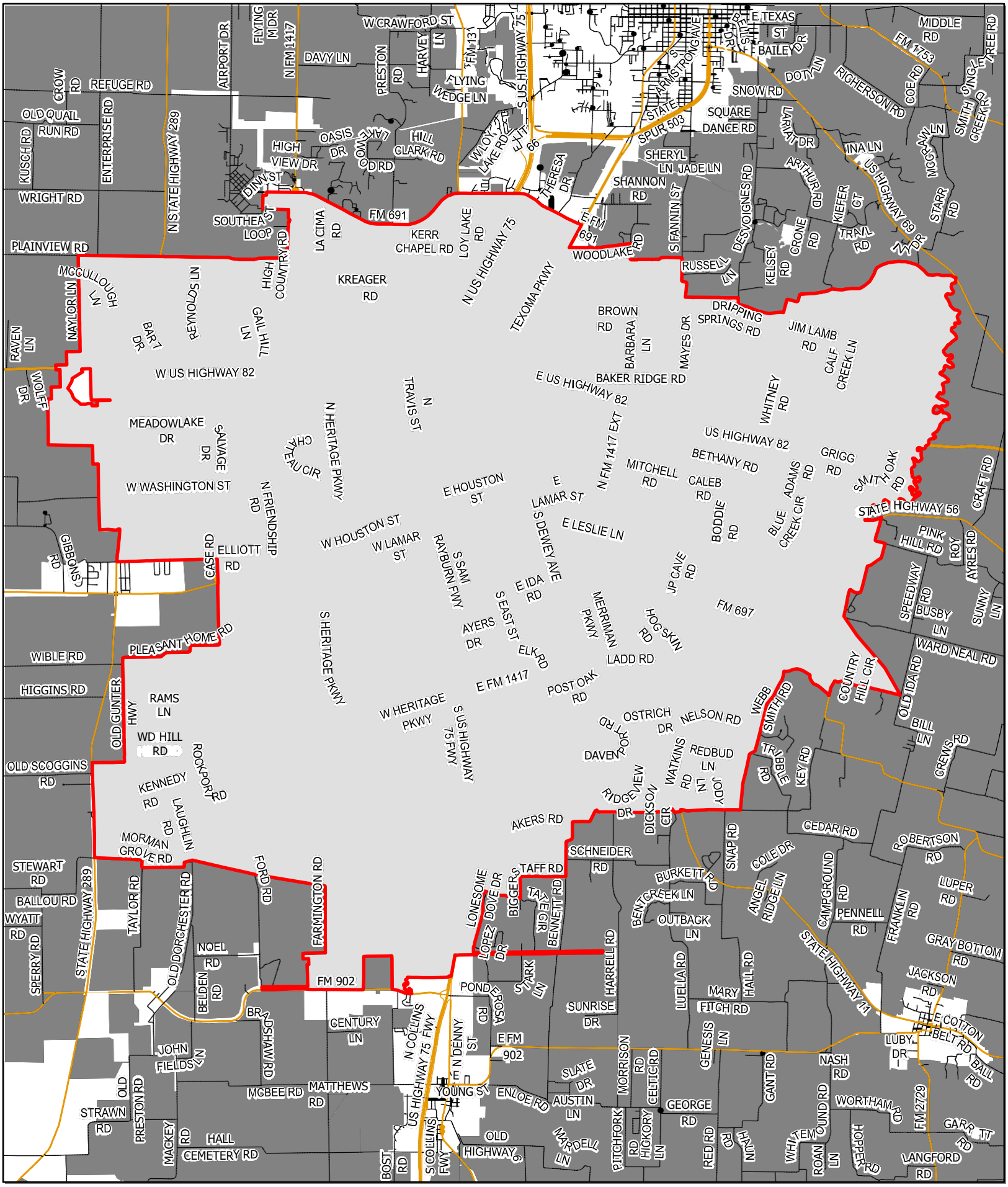
City of SHERMAN
Fire Chief
220 W. Mulberry St.
Sherman, TX 75090

EXECUTED this ___day of _____, 2023

_____
Grayson County Judge
Printed Name: Bruce Dawsey

EXECUTED this ___day of _____, 2023

_____
City Manager, City of SHERMAN
Printed Name: Robby Hefton



9/9/2022

0 2 4 Miles

SHERMAN FD
Boundary

Exhibit A

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes, and are intended for general information purposes only. It does not represent an on-the-ground survey and represents only approximate relative location of the property boundaries. All data provided represents current information as of the date shown and is believed to be accurate, but the accuracy is not warranted.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 11.**

Meeting Date: 01/17/2023

Prepared By: Billy Hartsfield, Acting Fire Chief

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 7023***

Authorizing Execution of an Agreement for Ambulance Services with Grayson County for the Period of October 1, 2022 through June 30, 2023

Issue:

To consider approval of an agreement between the City of Sherman and Grayson County regarding the provision of Emergency Medical Services during the period of October 1, 2022 through June 30, 2023

Background:

The Sherman Fire-Rescue Department provides Emergency Medical Services within certain areas of Grayson County, per an annual agreement. This agreement covers only through June 30, 2023 because City staff will be working with newly elected County officials on an agreement that will likely change the scope of and compensation to the City for these services.

Origination:

Grayson County and the City of Sherman

Financial Consideration:

The County will pay the City the quarterly amount in three equal quarterly payments of $33,158.00 after receipt of the required quarterly data report.

Staff Recommendation:

It is recommended that the Council approve the Agreement for Ambulance Services for the period of October 1, 2022 through June 30, 2023.

Alternatives:

As directed by Council

Attachments

Resolution No. 7023

Agreement

RESOLUTION NO. 7023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT FOR AMBULANCE SERVICES WITH GRAYSON COUNTY FOR THE PERIOD OF OCTOBER 1, 2022 THROUGH JUNE 30, 2023; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the Mayor be and is hereby authorized and directed, subject to any and all documentation being properly completed and approved as to form and content by the City Attorney, to enter into an Agreement for Ambulance Services with Grayson County for the period of October 1, 2022 through June 30, 2023, pursuant to the terms and provisions of the contract document attached hereto and made a part hereof for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 17th day of January 2023.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM
AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

STATE OF TEXAS §

FISCAL YEAR 2023

COUNTY OF GRAYSON §

AGREEMENT FOR AMBULANCE SERVICES

This Agreement for Ambulance Services (the "Agreement") by and between Grayson County, Texas, (the "County"), and the City of Sherman, a duly licensed Texas Emergency Medical Services and ambulance provider (the "Contractor").

Whereas, County has a tradition of Contractor and other providers being important participants in the Emergency Medical Services ("EMS") system in Grayson County;

Whereas, the County currently has a need for emergency medical services in the unincorporated areas of Grayson County;

Whereas, Contractor desires to provide emergency medical services in the unincorporated area of the County, subject to the terms of this Agreement; and

Whereas, Contractor desires certain funding from the County to enable it to provide such emergency medical services;

Whereas, each party has sufficient funds available from current revenues to perform the functions contemplated by this Agreement. Notwithstanding the foregoing, County represents and warrants to City that the Grayson County Commissioners Court has authorized funds in amounts sufficient to pay or perform its obligations under this Agreement; and

NOW, THEREFORE, in consideration of the premises and the mutual promises herein contained, the parties agree as follows:

I. Description of Contractor Services and Services Area

During the term of this Agreement, Contractor agrees to furnish ambulance and emergency medical services in the City of Sherman ambulance district as the service area shown in the attached Exhibit A (the "District"). It understood and agreed that the Contractor *may* provide ambulance and emergency medical services 7 days a week, 24 hours a day to persons requiring service within the municipal boundaries of any city within the District, and shall for persons requiring services in the unincorporated County portions of the District service area. However, this Agreement and the consideration therefore, are solely for response in the unincorporated areas of Grayson County unless services are requested for mutual aid or for response during disaster.

The Contractor shall manage all day-to-day operations, including field operations, dispatch, billing, collections, purchasing and other operational functions. The Contractor will negotiate all mutual aid agreements, maintain all facilities and equipment, hire/fire and provide or arrange for in-service training of all field personnel, manage all billing and collection functions, provide reports to the County, cooperate with and respond to the County on matters related to patient care, and generally manage all aspects of the ambulance system operations. The services to be provided will comply with all applicable county, state, and federal laws, regulations and ordinances in effect on the date that such Emergency Medical Services are performed by Contractor.

Notwithstanding any statement to the contrary in this Agreement, the services to be provided under this Agreement shall not be arbitrarily withheld, but it is understood by the parties that unforeseen circumstances may arise which prevent Contractor from providing the services at a particular time. Contractor shall restore such services with all reasonable speed to the same level which existed prior to such unforeseen circumstances arising, if such should arise. It is

recognized that Contractor has the primary and principal duty and responsibility of rendering services to citizens of the City of Sherman. In the performance of the services under this Agreement, Contractor shall have the sole responsibility and discretion to determine the priorities in the dispatching and use of units, equipment and personnel. The County understands that the availability of Contractor's units, equipment and personnel will be subject to the demands within the City of Sherman, which will in all cases take priority, as well as other existing interlocal and mutual aid agreements.

II. Employee Certifications

All persons employed or used by the Contractor in the performance of work under this Agreement shall hold all required and appropriate professional certifications, permits and/or licenses as required by all state and federal laws and regulations and shall conduct themselves in a professional manner.

III. Contractor Responsibilities

Contractor shall:

Maintain and meet current vehicle specifications as specified by the *Federal Specification Ambulance Emergency Medical Care Vehicle* as published by the *General Service Administration, Department of Transportation Federal Specification KKK 1822,* requirements as set forth by the *Texas Department of Health;*

Equip each ambulance and vehicle utilized to provide emergency medical services pursuant to this Agreement with all items for operations as required for the licensed level of service by the *Texas Department of Health;*

Provide motor vehicles used for providing ambulance service designed to transport ill, sick, or injured persons in comfort and safety;

Vehicles shall be maintained in a clean, sanitary and first class mechanical condition at all times, in compliance with all applicable state and federal standards for ambulances;

Respond to reasonable data requests relevant to services provided under this Agreement;

Consider participating in at least one exercise per fiscal year if conducted by the Grayson

County Office of
Emergency Management;

Participate in reasonable and necessary local planning, briefing or trainings as requested by the Grayson County Office of Emergency Management;

Participate in After Action Reviews as requested by the Grayson County Office of Emergency Management of emergency incidents involving a response of the Contractor. Participation shall be defined to include participation by personnel actually involved in the incident under review;

Provide, and maintain current, contact information for the Contractor to include active email addresses and telephone contact information for use by the Grayson County EOC and Sheriff's Office Communication Center; and

Adopt the National Incident Management System ("NIMS') and take all necessary steps to implement NIMS including required NIMS training for all personnel contemplated to provide response services pursuant to this contract.

IV. Disaster Assistance

During a time of disaster, declared or otherwise, local or in a neighboring jurisdiction, Contractor shall follow the County Emergency Management Plans and commit such resources as are necessary and appropriate given the nature of the disaster and upon request of the Grayson County Judge or Emergency Management Coordinator.

V. Outside Work

Contractor shall not be prohibited from doing other work provided the services do not interfere with Contractor's primary responsibility pursuant to this Agreement to provide EMS response and transport within the Contractor's primary area of response as set out in the map attached hereto as Exhibit A.

VI. Medical Director

Contractor shall be responsible for State requirements for provider organizations regarding Medical Directors and their role in purchasing controlled drugs and other controlled supplies, as well as for issuing and signing written standing orders.

VII. Consideration

For consideration of the provision of ambulance and emergency medical services delineated in this Agreement, the County agrees to pay, for the duration of this Agreement $ 99,474.00, payable in quarterly installments upon receipt of the *required quarterly data report on the following dates:*

January 15, 2023	$33,158.00
April 15, 2023	$33,158.00
July 15, 2023	$33,158.00
Total for Fiscal Year:	$99,474.00

VIII. Charges for Services

Any billing and collection procedures used will be developed by the Contractor. The County does not require nor shall it be responsible for any billing or collection for services provided under this Agreement.

The service rate for all 911 and non-emergency transports shall be set by the Contractor without consideration and approval from the County. Rates for services and collection rates will be provided to the County by the Contractor upon request.

Nothing in this Agreement shall prohibit or limit Contractor from separately billing and collecting charges and expenses from persons to whom services are provided under this Agreement ("Patients"). Contractor shall have sole discretion over the amount of any such charges or expenses imposed on Patients. County shall have no authority over or responsibility for any Patient billing or collection activities for services provided by Contractor under this Agreement. The Patient charges and expenses billed and/or collected by Contractor shall be in addition to, and shall not affect, County's obligation to pay Contractor for the amounts due under this Agreement.

IX. County Ambulance Data Requirements

Contractor shall provide to the County monthly operating reports including all data set out in Exhibit B attached to the Agreement and in the format shown. The reports shall be provided to the County by email to allisons@co.grayson.tx.us or other email as designated by the County in writing. The first report under this Agreement for FY23 shall be due on or before the 15th day of November 2022.

X. Insurance

Throughout the term of this agreement, and any extensions thereof, Contractor shall procure, pay for, and maintain insurance coverage for the provision of ambulance service. Copies of this insurance shall be evidenced by delivery to the County of certificates of insurance, including general and professional medical and automobile liability. Said proof of coverage shall be delivered by email at allisons@co.grayson.tx.us on or before October 30, 2022.

XI. Cooperation with Other EMS Providers

Contractor agrees to exchange appropriate and pertinent information with other EMS providers, including service areas, primary locations and numbers of ambulances available for immediate response.

XII. Term of Agreement and Renewal Provisions

Unless terminated earlier pursuant to the terms hereof, this Agreement shall commence at **12:01 A.M. on October 1, 2022** and terminate at **midnight, June 30, 2023**.

It is understood and agreed that this Agreement may be extended for additional one-year terms by agreement of the parties.

XIII. Amendment and Modification

Any alterations or deletions to the terms of this Agreement shall be by written amendment executed by both parties to this agreement. Any alterations, additions, or deletions to the terms of this agreement that are required by changes in Federal, State, or local law, or regulations, will be automatically incorporated into this Agreement without written amendment, and shall become effective on the date designated by such law or regulation.

XIV. Miscellaneous Provisions

The following miscellaneous provisions apply to this Agreement:

Compliance with Applicable Laws, Rules and Regulations — All services furnished by Contractor shall be rendered in full compliance with all applicable federal, state and local laws, rules and regulations;

Non-Transferable Agreement — Neither party may assign this agreement or any rights, interest, or obligations under this agreement without the prior written approval of the other party.

Permits — Contractor shall be the holder of the state Ambulance license and of all state and local vehicle permits, and shall make all necessary payments for those licenses and permits;

This Agreement shall be interpreted in accordance with the laws of the State of Texas and Grayson County is the proper venue for any action regarding this Agreement.

This Agreement represents the entire Agreement of the Parties and supersedes any verbal or written representations of, to or by the Parties to each other.

XVI. Notice and Addresses of Parties

Any notice required under this Agreement shall be delivered by certified mail, return receipt requested, addressed to the proper party, at the following addresses:

To the County: Grayson County Judge
100 W. Houston, Suite 15
Sherman, Tx 75090

To Contractor: City of Sherman
Fire Chief
220 W Mulberry St.
Sherman, TX 75090

XVII. Independent Contractor

It is expressly understood and agreed that Contractor is an independent contractor in its relationship with the County. The County is interested only in the results obtained under this Agreement; the manner and means of conducting the work are under the sole control of the Contractor. None of the benefits provided by the County to their employees are available to Contractor employees, agents, or representatives. Contractor is solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-contractors under this Agreement. Nothing in this Agreement at any time or in any manner shall be construed to 1) effect an agreement of partnership or joint venture, or 2) render the County the employer or master of Contractor, its employees, agents or representatives.

Notwithstanding the foregoing, and pursuant to Section 791.006(a) of the Texas Government Code, as amended, each party shall be solely responsible for any civil liability arising from furnishing or obtaining the services contemplated herein as fully and to the same extent as that party would have been responsible in the absence of this Agreement. The parties understand and agree that if Contractor does not furnish personnel, equipment or services to County after being notified of the need for such services, Contractor shall not be liable to County in damages or otherwise for the failure to furnish the same.

County agrees that the acts or omissions of any person dispatched by Contractor pursuant to this Agreement, travelling to or from said calls, or in any manner furnishing Services to County, outside the city limits of Contractor, shall be considered to be the acts and agents of County in all respects, notwithstanding that such person may be a regular employee or independent contractor of Contractor.

XVIII. Termination of Contract

Either party may terminate this agreement by giving sixty (60) days written notice to the address as provided in Article XV Notice and Addresses of parties.

If the County does not authorize funds necessary for performance of the obligations under this Agreement, this Agreement shall be null and void.

XIX. Governmental Immunity

This Agreement does not waive, nor shall it be deemed to waive, any immunity or defense, including, but not limited to, governmental immunity, that would otherwise be available to the parties against claims

arising from the exercise of governmental powers and functions.

XX. Severability

In the event any provisions of this Agreement are for any reason held invalid, illegal, or unenforceable, they shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable they shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

XXII. Applicable Law

This agreement shall be construed under and in accordance with the laws of the State of Texas, and all of this Agreement's obligations are performable in Grayson County, Texas.

Signed this_____day of_____,2023

City of Sherman, Texas

By: _____

Robby Hefton, City Manager

Signed this _____day of _____, 2023

Grayson County, Texas

By:_____

Bruce Dawsey, Grayson County Judge

KEEFER RD
FULTON LN
DEFRATUS
HAGERMAN RD
TERRY LN
CROW RD
LAWRENCE RD
OLD QUAIL RUN RD
ENTERPRISE RD
JUDGE ELLIOTT DR
PLAINVIEW RD
GAGE RD
HAZELWOOD
MEADOWLARK RD
MINIATURE
WASHINGTON
HIGGINS RD
AGNAN RD
SCOGGIN
TEWART RD
BLUEBONNET LN
OLD GUNTER
NORMAN RD
WYATT RD
MARTINEK RD
PRESCOTT RD
SPERRY RD
PRECINCT RD
BELDEN RD
FARMINGTON RD
FM 902
HARRELL RD
SHAWRD
MATTHEWS RD
MCBEE
PRESTON RD
BOUNDS RD
CYPRESS POINT DR
PAXTON RD
VINEYARD RD
ICE RD
CAVENDER
BOSTON RD
S COLLEGE
JAMESON RD
CROCKER RD
ROAN LN
GEORGE RD
AUSTIN LN
NASH RD
JOE BOB LN
GENESIS
FITCH RD
SUNRISE
MORRISON
HICKORY LN
SMITH
MAGKEY RD
WALL STREET
HIGHWAY 289
HIGHWAY 75
HIGHWAY 377
FM 1417
FM 120
W MAIN ST
W CRAWFORD ST
N TEXAS BLVD
AIRPORT DR
N FM 1417
HARVEY LN
SQUARE DANCE RD
SHERYL LN
SHANNON RD
S FANNIN ST
KREAGER RD
CHAPEL RD
LOY LAKE
HIGHWAY 75
BAKER RIDGE RD
STATE HIGHWAY 56
MERRILL
HELL
BETHANY
SOUTH
WEST
EAST
NORTH
HERITAGE
WATSON RD
SCHNEIDER
FRANKLIN
COLLEGE
OLD BOY
IDA RD
TEXOMA DR
MORTON ST
GLENWOOD
KYKER LN
PELTS DR
BAILEY
DANCE
SHADY
GRAY
DAVE
CARL
JIM
BARR
BAKER
WHITE
CREEK
KLINE
HARRIS CO
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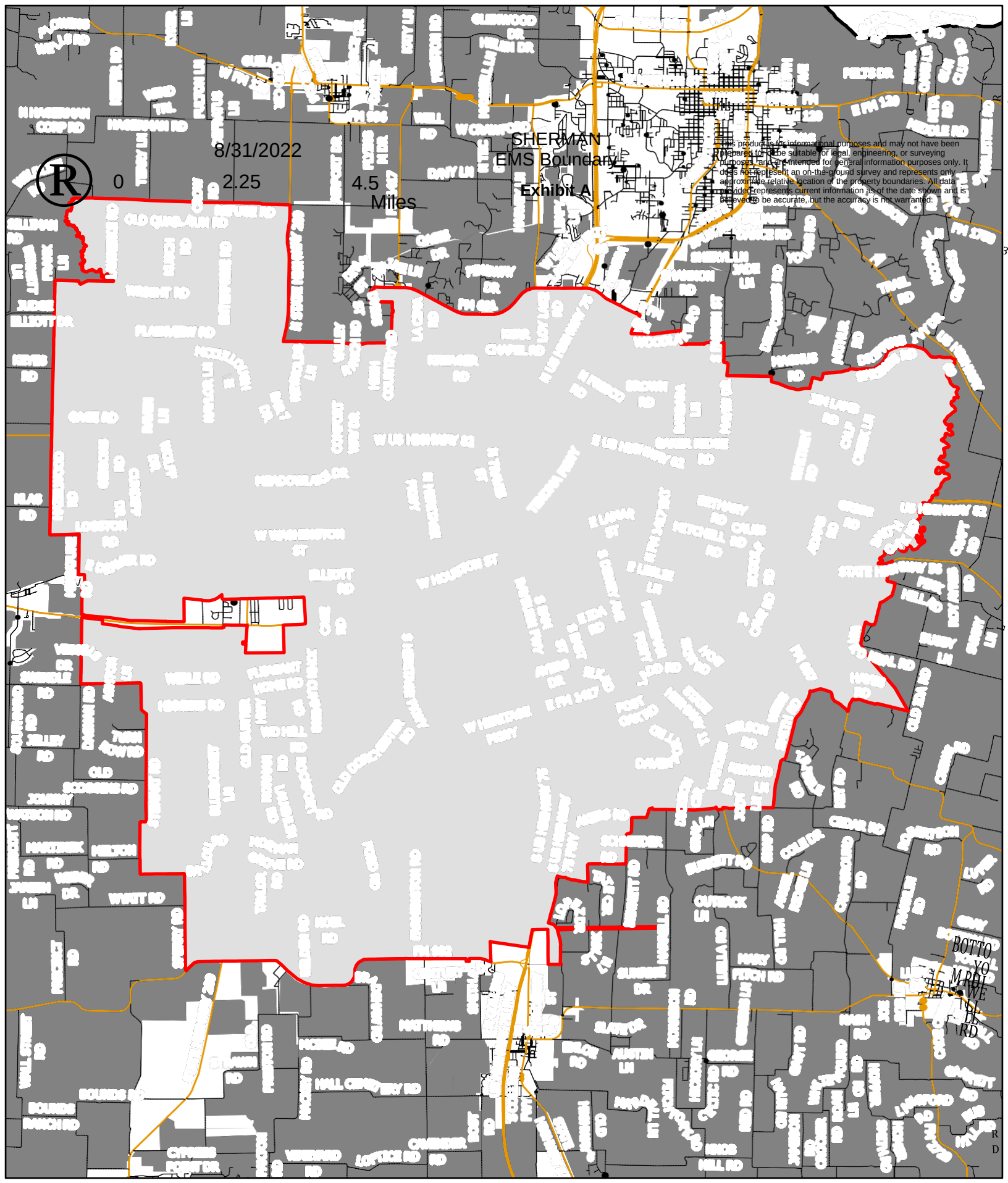
WAY
LANE
DRIVE
ROAD
STREET
COURT
CIRCLE
TRAIL
PLACE
BOULEVARD


8/31/2022
0
2.25
4.5
Miles
SHERMAN
EMS Boundary
Exhibit A
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes, and are intended for general information purposes only. It does not represent an on-the-ground survey and represents only approximate relative location of the property boundaries. All data provided represents current information as of the date shown and is believed to be accurate, but the accuracy is not warranted.

Monthly Grayson County OEM Report
Ambulance Data Requirements

District: _____ Report mmm/yyyy: _____

Date of Report: Number of FTSA:[1]

Run Type	Number of Calls
9-1-1 CALLS:[2]	
9-1-1 Transports :[3]	
Transports by FTSA	
Transports by non-FTSA:	
9-1-1 Non-Transports :[4]	
Treatment/ No Transport:	
No Treatment/ No Transport:	
Public Assist/ Welfare Check:	
Emergency Stand-by:[5]	
Cancelled:	
DOS	
Other: (explain)	
_____	
9-1-1 Transfer to Air Medical :[6]	
a _____	
b _____	
c _____	
TOTAL 9-1-1 CALLS	0
NON 9-1-1 CALLS:[7]	
Transfers by FTSA:	
Transfers by non-FTSA:	
Non-emergency Stand-by:	
TOTAL NON-9-1-1 CALLS	0
GRAND TOTAL CALLS THIS MONTH	0

MUTUAL AID REPORT[8]	
9-1-1 Responded in Mutual Aid capacity:	
a _____	
b _____	

RESPONSE TIME REPORT[9]	
9-1-1 Ambulance Response Time	
This month last year:	
This month this year:	

Monthly Grayson County OEM Report
Definitions

[1] Full Time Staffed Ambulance, ambulances staffed with full-time personnel.

[2] Number of 9-1-1 generated calls this month; includes walk ups.

[3] Number of 9-1-1 generated calls in which the patient was transported to appropriate

[4] Number of 9-1-1 generated calls in which the patient was not transported (patient refusal,

[5] Number of 9-1-1 generated calls in which EMS was requested to stand-by or stage from

[6] Number of 9-1-1 generated calls in which the patient was transferred to Air Medical for

[7] Number of 9-1-1 calls generated by means other than 9-1-1; scheduled/ non-scheduled

[8] Calls in which this agency responded to another district for mutual aid; list the district(s) and

[9] Average response time for 9-1-1 calls for the same report month in the previous year and

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 1.**

Meeting Date: 01/17/2023

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

**** REQUEST TO ADVERTISE***

Purchase Multiple Fleet Vehicles for Multiple City Departments

Issue:

Obtaining City Council approval to advertise for the solicitation of public bids for the purchase of multiple vehicles needed for various City departments.

Background:

The solicitation of public bids will fulfill legal procurement requirements and address fleet needs within various departments, including Public Works, Facility Maintenance, and Water Quality.

Origination:

Finance Department

Financial Consideration:

The cost of advertising will be approximately $200.00.

Staff Recommendation:

Staff recommends that the City Council approve this request to advertise.

Alternatives:

As may be directed by the City Council

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 2.**

Meeting Date: 01/17/2023

Prepared By: Jim Cross, Water Systems Manager

Approved By: Robby Hefton, City Manager

Caption:

**** REQUEST TO ADVERTISE***

Annual Supply of Water Chemicals

Issue:

Approval of a request to advertise for the annual supply of water chemicals for the calendar year 2023

Background:

Annually, the City requests public bids or renews the contract, if able, for the supply of our industrial chemical purchases. These chemicals are for use at the Water Treatment Plant, Wastewater lift stations, and the Wastewater Treatment Plant.

Origination:

Production Services

Financial Consideration:

Funds for the purchase of chemicals are included in the recently approved budget for fiscal year 2022-2023. Advertising costs are estimated to be about $200.00.

Staff Recommendation:

It is recommended that the City Council approve the advertising related to the purchase of the annual supply of chemicals.

Alternatives:

As may be directed by the City Council

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 3.**

Meeting Date: 01/17/2023

Prepared By: Zachary Flores, Executive Director of Public Safety

Approved By: Robby Hefton, City Manager

Caption:

**** REQUEST TO ADVERTISE***

Contracting with a Construction Manager-at-Risk (CMAR) for Renovations and Additions to Fire Station No. 1

Issue:

Requesting permission to advertise for CMAR proposals to manage renovations and additions to Fire Station No. 1, located at 318 S. Travis Street.

Background:

The Sherman Fire Department received approval during the fiscal year 2022-23 Budget Workshop to move forward with renovations and additions for Fire Station No. 1. Also included in the City Council agenda for January 16, 2023, City staff will be requesting approval of a professional services agreement with the architecture firm, Hidell and Associates.

The City has utilized the CMAR process on previous projects, and it has proven effective and efficient. This item will allow City staff to advertise for a CMAR, so they may work with Hidell and Associates to establish the best, most accurate pricing as we look to the possibility of renovations and additions to the Central Fire Station.

Origination:

Management Services

Financial Consideration:

Advertising costs are estimated at $200.00.

Staff Recommendation:

It is recommended that the City Council approve the request to advertise.

Alternatives:

As may be directed by the City Council

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **F. 1.**

Meeting Date: 01/17/2023
Prepared By: Kent Sharp, President
Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS
Receive Quarterly Progress Report from Sherman Economic Development Corporation President Kent Sharp

Issue:

To receive the Sherman Economic Development Corporation (SEDCO) quarterly progress report from President Kent Sharp

Background:

The brief presentation by the SEDCO President will provide the City Council with an overview of SEDCO's activities and accomplishments during the period of October 2022 to the end of December 2022. SEDCO's last update was presented at the Joint Meeting between the City Council and SEDCO Board on September 13, 2022.

Origination:

City Council

Financial Consideration:

This presentation is for informational purposes only and has no impact on the City's revenues or expenses.

Staff Recommendation:

No action is required of the City Council.

Alternatives:

None recommended

Attachments

SEDCO Quarterly Progress Report

REPORTING FORM FOR BOARDS AND COMMISSIONS

Name of Board: **Sherman Economic Development Corporation**

Name of Chair: Janie Bates
Name of Vice-Chair: Scott Bandemir

Date of Report to City Council: January 17, 2023

1. **In simple terms and as briefly as possible, please describe the mission of your board.**
   - *The mission of the Sherman Economic Development Corporation (SEDCO) is to grow and diversify the economy of Sherman and the surrounding area through the addition of new jobs and investment of primary employers.*

2. **Please list the top accomplishments of your board within the past quarter. (Please limit the list to five or fewer items).**
   - *GlobalWafers America broke ground on the new $5 Billion, 300-mm silicon wafer production facility. This project brings 1,500 new jobs to our community. At full build-out, the fabrication plant will be one of the largest electronics production facilities in the U.S. and among the largest manufacturing plants in the world.*
   - *SEDCO and the City of Sherman were awarded the Community Economic Development Award (Pop. 20,001 - 50,000) for our work on the biggest deal in Texas history – Texas Instruments - from the Texas Economic Development Council (TEDC).*
   - *Kent Sharp was named in the Austin Business Journal's "Texas 100 List of Influential Professionals to Watch in 2023" and was nominated as "Community Leader of the Year" from the Sherman Chamber of Commerce.*
   - *Golden Shovel ranked sedco.org in the top 5 of the "Best Economic Development Websites for 2023."*
   - *The SEDCO Board voted in the FY 22-23 Officers: Janie Bates (Chair), Scott Bandemir (Vice Chair), and Jason Brumm (Secretary).*
3. **What are your plans for this board in the next quarter?**
   - *Compete aggressively for the attraction of new jobs and investments to the city by narrowing our focus to those companies that align with our semiconductor cluster, both nationally and internationally.*
   - *Through the Business Retention and Expansion (BRE) Program, we will continue our BRE visits to the Sherman industries and work closely with companies that have announced new investments in Sherman to ensure they have the support to meet their goals and receive the incentives as identified in the performance agreements.*
   - *Launch the 2023 Raising Innovative Sherman Entrepreneurs (RISE) Challenge with the application portal open from January 2nd-February 2nd.*
   - *Organize meetings between Austin College and Sherman's semiconductor companies – Texas Instruments, Coherent, and GlobiTech/GlobalWafers.*
   - *Kent Sharp will speak at Coffee with the Mayor and the Denison Development Alliance Summit about the current economic development activities in Sherman.*
   - *Host the Sherman Women-Owned and Minority-Owned (WOMO) Business Kick-Off Event on January 12th at the Finley 502. This event will provide an opportunity to introduce the program to the WOMO businesses. Our goal is to learn about their business needs and create an environment for education and support.*

- *Host a WOMO Committee Meeting on January 24th to review the information gathered at the Kick-Off Event and plan next steps.*
- *Attend a TEDC Webinar – "Preparing for the Texas 88th Legislative Session – Understanding the Legislative Process."*
- *Meet with the Dallas Regional Chamber's Inclusion and Community Engagement Team and the SVP of Research and Innovation to talk about the WOMO and RISE Programs.*
- *Co-host the RISE Orientation & Grayson SBDC Training at Grayson College.*
- *Kent Sharp, Ashton Bellows, and Shannon Blake will attend the TEDC Legislative Conference in Austin on February 22nd-24th. During the conference, Ashton and Shannon will complete another Future Leaders Training (FLT) Seminar.*
- *Ashton Bellows, Shannon Blake, and Brandy Washington will attend the Dallas Regional Chamber's Women's Business Conference on March 9th.*
- *Brandy Washington will continue the Leadership Sherman program and visit Austin with the class on March 21st-22nd.*
- *Host the Q1 Plant Manager and Safety Leader Forum on March 30th at Coherent.*
- *Continue updating the job listings on shermantxjobs.com. New listings will be boosted on social media.*
- *Continue to add contacts to the Sherman WOMO business directory.*
- *Sponsor the Sherman Chamber Annual Awards Luncheon.*

4. **How often did this board meet in the last quarter?**
   - *The SEDCO Board meets on the second Tuesday of each month and holds special called meetings when needed. Since our last report, the SEDCO Board has held three regularly scheduled meetings (October 11th, November 8th, December 13th).*

5. **In what percentage of those meetings was a quorum of board members present?**
   - *100%*

6. **Did any member attend less than 75% of those meetings? If so, which member and how often did they attend?**
   - *Gail Utter attended two of the three meetings held in Q4 2022.*

7. **What other information would your board like to communicate to the City Council? (please be concise in your response).**
   - *Presently working six active projects with an estimated $3.06 Billion CAPEX, approximately 4,440 new jobs, and 283 retained jobs.*
   - *Completed four site visits with companies interested in relocation and/or expanding their operations to Sherman.*
   - *In December, Kent Sharp along with Mayor David Plyer and City Manager Robby Hefton went to Austin with Coherent's (formerly II-VI/Finisar) Chairman/CEO, President, and Vice President to meet with Governor Abbott about a potential $3 Billion project which could bring up to 4,000 high-tech jobs to Sherman over the next five years.*
   - *During the last quarter, the SEDCO Board approved the following:*
     - *SEDCO Investment Policy*
     - *Supplemental Compensation Agreements for Kent Sharp and Ashton Bellows (Ghaemi).*
     - *Resolution No. SEDCO-2022.13 (SEDCO's Travel and Expense Policy)*
     - *Resolution No. SEDCO-2022.15 authorizing SEDCO to enter into a 3-year office lease agreement with BOK Financial at 307 W. Washington St., Suite 102.*

- *Held Blalock zoning discussions and multiple meetings with SEDCO's attorney, city staff, and SEDCO Board Members to amend the current zoning into a Planned Development for more cohesive regulations.*
- *SEDCO became a member of the Dallas Regional Chamber and met with the Managing Director of Membership & Revenue Growth to discuss SEDCO's programs and ways to promote Sherman in the Dallas area.*
- *Hosted the Fall Leadership Breakfast with 23 Plant Managers and community leaders in attendance.*
- *Kent Sharp served as a panelist at the Austin College Symposium and as a keynote speaker at the RCENTX Summit at UTD.*
- *Brandy Washington completed the Texas Economic Development Basic Training in Richardson, TX.*
- *Ashton Bellows was selected as the Texas Economic Development Policial Action Committee (PAC) Chair.*
- *Shannon Blake attended the FABTECH tradeshow in Atlanta, Georgia with Team Texas and Oncor and collected a total of 259 leads. FABTECH is North America's largest metal forming, fabricating, welding, and finishing event.*
- *The staff attended the TEDC Annual Conference in San Antonio and while at the conference, Ashton and Shannon completed a FLT seminar.*
- *Shannon Blake attended the Industrial Asset Management Council (IAMC) Fall Forum in Detroit, MI.*
- *Kent Sharp met with other north Texas EDCs to discuss a 75-corridor development partnership.*
- *Co-sponsored the Red, White, and You Job Fair that saw a total of 41 employers and 174 job seekers.*
- *Installed property signs on Progress Parks IV, V, and VIII to promote the industrial land to potential companies.*
- *Met with Flyer View Group to initiate the update of the aerial map and review the Dynamic Map Program.*
- *Hosted a luncheon for the RISE judges to discuss program updates for the 2023 Challenge.*
- *Hosted two RISE Public Interest Meetings to educate the public about SEDCO, increase awareness about the RISE Challenge guidelines, and help answer any questions of those interested in applying.*
- *Promoted and attended the Austin College Fall Employer Recruitment Day. Four industries were in attendance.*
- *Updated the job listings on ShermanTXJobs.com.*
- *Continued the partnership with Grayson College CWL to offer no-cost training to full-time employees of Sherman-based, Type A businesses.*
- *Continued working with 2x2 Media on videos that highlight Sherman and Grayson County's amenities and assets to new industries, businesses, jobseekers, and future residents.*
- *Hosted a booth at Trick or Treat on Travis and Wall Streets.*
- *Sponsored the Sherman Chamber of Commerce Texas Legislative Forum.*
- *Reviewed Google ad analytics with Hannah B PC to edit targeted cities, change and pause keywords, and update conversion action items on sedco.org.*
- *Sponsored 14 ads on social media highlighting the RISE Challenge, the industrial boom of Sherman, Manufacturing Day, the WOMO Kick-Off Event, Sunny Delight's job fair, and the Sherman community:*

    - *Total Reach: 56,051*
    - *Total Link Clicks: 1,764*
    - *Total Post Engagement: 15,307*
    - *Total Event Responses: 98*
- *Attended the following meetings and events: TEDC's Forward Planning, Workforce, Legislative, Political Action, Education, Conference, Membership, and Communications Committee meetings; TEDx at Austin College, City Council Meeting, Housing Authority Meeting, SISD Facilities Committee Meeting, Sherman Chamber Luau and Appreciation Event, 4th Annual Economic Development Summit at UTD, THRMA's State of the Community Event, News at Noon, and Plug-In Texoma.*

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **F. 2.**

Meeting Date: 01/17/2023

Prepared By: Sarah McRae, Tourism/Main Street Manager

Approved By: Robby Hefton, City Manager

Caption:

**** OTHER BUSINESS***

Consider the Request of Jan Fletcher to Temporarily Close Certain Streets for the Black History Month Freedom Parade on Saturday, February 11, 2023, at 10:00am

Issue:

The B C Bowie Scholarship Foundation will host their 3rd annual "Black History Month Freedom Parade", on Saturday, February 11, 2023, at 10:00 am, and are requesting assistance with traffic control.

Background:

The 3rd annual "Black History Month Freedom Parade" will begin at 10:00 a.m. and will follow the same route as displayed on the attached map. The event will require traffic control assistance from the City of Sherman. They will contact the Sherman Police Department to coordinate the Parade escort upon approval

Origination:

Jan Fletcher, Parade Coordinator, along with Barbara Bowie and the B C Bowie Scholarship Foundation

Financial Consideration:

City labor and equipment to provide traffic control assistance and implement barricade placement and removal may be required.

Staff Recommendation:

It is recommended that the City Council authorize any street closures and traffic control necessary to support the event.

Alternatives:

As directed by the Council

Attachments

Black History Month Parade Request Letter 2023

Black History Month Parade Route Map 2023

BHM Freedom Parade Special Event Request Packet

11/28/22

To: Sarah McRae, City of Sherman

From: Jan Fletcher, Black History Month Freedom Parade

RE: Special Event Application for Parade

To Whom It May Concern:

Please process the Special Event Application for our Black History Month Freedom Parade to be held Saturday, February 11 at 10 am in downtown Sherman. We are part of the B C Bowie Scholarship Foundation's 3rd Black History Month Festival.

Our main events will be Friday February 10 for the Youth Summit at Sherman HS in the morning and Denison HS in the afternoon. Friday night is an original play with music at Austin College's Wynne Chapel.

The parade will hopefully be in Sherman for the first time. We are recruiting 40+ parade participants to celebrate Black History Month which will include a Greyhound Bus to signify the Civil Rights Freedom Riders. We are recruiting local school bands, civic organizations, businesses and dignitaries to celebrate the progress of the Civil Rights movement of the 1960s and to build strength and community for the future. It is our hope to attract a good crowd of local residents to celebrate with us.

Please advise when this will be presented on the Sherman City Council agenda so we may attend and thank members for the Freedom Parade approval. Should you have any questions, do not hesitate to contact me.

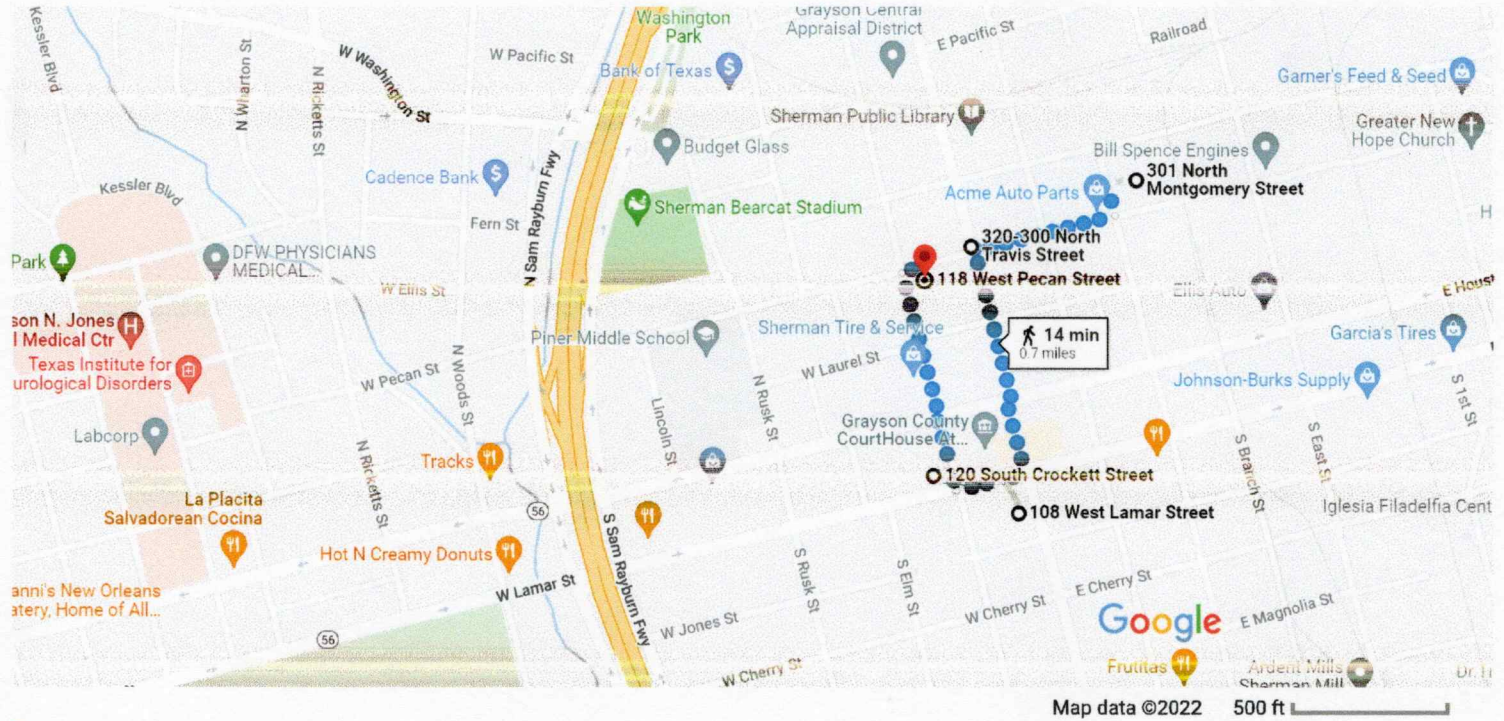
Jan Fletcher, 972-897-5796

Parade Coordinator

Google Maps

301 N Montgomery St, Sherman, TX 75090 to 118 W Pecan St, Sherman, TX 75090

Walk 0.7 mile, 14 min



via E Pecan St — 14 min

0.7 mile

Mostly flat

Sherman
CLASSIC TOWN. BROAD HORIZON.

Special Events

Policies and Procedures Manual & Application

Community and Support Services Department
405 N. Rusk
903-892-7230

The City of Sherman is host to a wide variety of special events each year. Those events range from small gatherings to larger community events. The City has recognized that these special events have become an important part of our resident's life by enhancing tourism, culture, recreation and education as well as providing economic benefit to businesses in the City.

Some gatherings due to their size and special requirements may place unique demands on public resources. In order to plan for those demands and to ensure that public health and safety is protected, it is necessary that the city have advance notice of these special events. This manual will provide details outlining what types of events can be hosted and where.

The purpose of the Special Events Policies and Procedures Manual is to provide a consolidated manual to enable special event coordinators or those thinking of hosting an event easy access to the necessary information to help make the event a success. The primary goal of this manual is to create a win-win relationship between the City of Sherman and event organizers. By creating this relationship both parties will be able to receive, in a timely manner, the required information to plan a special event, big or small.

The specific objectives of the policy and procedure manual ensure that:

- The City of Sherman's assets are protected;
- The City of Sherman's citizens interests are met;
- The event organizers work with the merchants and residents to ensure that any negative impact is kept to a minimum;
- All Federal, County and Municipal laws, regulations and statutes are observed;
- The event organizers work closely with the Community and Support Services Department or designee;
- All special event applications are handled in a fair and equitable manner;
- Each event is evaluated in a consistent manner;
- All direct costs related to the services provided by the City of Sherman are recovered.

A special event is defined as a one time, annual, or infrequently occurring event on City of Sherman property that is reserved for exclusive use. Types of events may include but are not limited to: Cultural events that celebrate/educate heritage and cultures; Theatrical events; Commemorative events acknowledging significant dates or occurrences; Community events that provide the community with an opportunity to celebrate; Athletic events; Artistic events that celebrate/display creative and artistic works; or Commercial events designed to generate surplus revenue.

Special Event Permit Application Process

1. Complete the Special Event Permit Application and submit it to the Department of Community and Support Services, along with any applicable fees, sixty (60) days prior to the event date. The Community and Support Services Office is located in the Sherman Municipal Building at 405 N. Rusk on the 2nd Floor.

2. To ensure that your event is moved along in a timely manner, include as much information as possible on the application. You will be contacted for verification if questions arise.

3. After departmental approval from all affected departments, event approval will be placed on the City Council agenda.

4. You will be notified within 30 days of application submittal the date your event will go to City Council for approval. (All special events require City Council approval.)

5. It is advised, but not required; that you or someone from your organization is present at the City Council meeting to answer any questions that may arise.

6. After the City Council has approved your event you will receive written notification of the approval of your Special Event Application.

Events that will be held on the Municipal Grounds or at a park facility will require facility reservation prior to completion of the Special Event Application. Facility reservation does not guarantee event approval, nor does event approval guarantee facility reservation. Facility reservations will be checked prior to event approval and any event that does not have the appropriate facility reserved will be denied.

For annual events, you can submit a Date Request Form to hold the date of your event for the following year. Event date requests should be submitted by October 31st prior to the event year. An event date request may still be submitted after October 31st; however, the event application must be submitted a minimum of sixty (60) days prior to your event. Remember to check facility availability prior to submitting a Date Request Form.

General Policies and Procedures

1. All legislation, bylaws, regulations and City of Sherman Code of Ordinances must be adhered to.

2. The special event staff and volunteers must adhere to all special event policies and procedures. In the interest of public safety, a zero tolerance policy is enforced for all special events. This means failure to comply with standards will result in ticketing and/or closure of event.

3. The special event operator is required to provide evidence of all necessary licenses/permits required to operate the event.

4. The special event operator is required to submit an Emergency Plan with the special event application. The Emergency Plan must identify potential risks and provide information on how to respond to those risks (i.e. severe weather, notification system and evacuation plan).

5. All special events must comply with current ADA standards to allow participation of all residents at the special event they are planning. For useful information on planning an accessible event, please contact the Community and Support Services Office.

6. No person may be permitted at any special event to: (a) carry or sell firearms or prohibited weapons or (b) carry or sell illegal drugs or (c) carry or sell alcohol.

7. Notwithstanding any of the above, the community and support services department or its designee may vary any element of this policy at their sole discretion.

8. Chalk can be used on a limited basis, as outlined by the Public Works Department or designate to enhance the event setup.

9. Facilities will not be used for anything other than what is permitted by the Community and Support Services Department.

Special Event Insurance

1. The special event organizer must maintain commercial liability insurance, with the city listed as an additional insured before the special events permit will be issued.

2. The certificate shall serve as evidence of a policy written by a company licensed in the state.

3. The policy is to be in effect for the duration of the event, with minimum limits of liability of $500,000.00 per occurrence, $1,000,000.00 aggregate for bodily injury, personal injury and property damage, and $100,000.00 per injury, $300,000.00 per occurrence and $100,000.00 per occupational disease.

4. The liability insurance requirements shall not apply to private parties that will not be open to the general public.

5. The City of Sherman reserves the right, solely at its discretion, to set higher insurance limits. This may be required depending on the type of activity planned during the event (e.g. fireworks displays, amusement rides).

6. The special event organizer shall indemnify and hold the City of Sherman harmless from and against all liability, loss, claims, demands, costs, and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence or act of omissions by the above names, their officers, agents, employees, volunteers or others for whom they are responsible at law, arising out of any cause whatsoever, either direct or indirect, through its use and/or operation of city property in connection with the special event.

Special Event Emergency Procedures

1. Fire Code requires a Public Safety Plan for certain events. If a Plan is required, it must address how the organizer plans to alert both the attendees and emergency services personnel to the emergency, how they plan to move attendees to safety and provide Fire and Police access to the scene. The City will notify you if a Plan is required.

2. At no time may the activities of the special event restrict access to the street by police and fire vehicles.

3. Prepare an emergency plan to address the following issues:

   - Medical Aid: Know the location of first-aid kits; identify people who have knowledge of CPR and/or a medical background.
   - Fire Emergencies: Provide fire extinguishers/extinguishing equipment, garden hoses, etc., for all cooking areas.
   - Maintaining and/or providing emergency access (moving barricades, tables, etc.) when necessary.

   The emergency plan should identify all persons assigned to execute the emergency plan operation, the method to alert the personnel (i.e., bullhorn, whistle, bell, etc.), and the response to put into action for the emergency situation.

4. Fire hydrants shall not be blocked at any time by vehicles, tables, decoration, etc. A minimum six-foot clearance must be maintained around hydrants at all times, and a clear unobstructed path from the street to the hydrant. Ropes or other objects shall not be attached to fire hydrants at any time.

5. In the event an emergency vehicle must enter the event area, a minimum sixteen (16) foot wide road clearance must be maintained for the emergency vehicles. At all times during the event, persons shall be designated to be available to move barricades, tables, chairs, etc. if necessary.

6. If emergency vehicles are requested to respond to your event, the designated personnel must immediately go to the appropriate barricades and standby, as the responding vehicles will need access to your event. Having this standby procedure will prevent any delays for the emergency vehicles.

City of Sherman – Police & Fire Rescue Services

1. Crowd control will be the responsibility of the event organizer. A detailed plan outlining the measures put in place to deal with crowd control will be the responsibility of the event organizer. The plan will need to be submitted to the Community and Support Services department along with application submission.

2. The need for the use of security will be evaluated by the Sherman Police Department on an event by event basis. The cost of special/additional support will be the responsibility of the event organizer.

3. The plan will be forwarded by the Community and Support Services department, as needed, to the City of Sherman Fire Department to ensure adequate measures are in place for fire and life safety concerns. If there are any concerns, the event organizer will be contacted prior to your event being placed on the City Council agenda.

Street Closure

1. Applicants requesting a temporary street (meaning any part of the municipal road allowance) closure for any special event will need to request the street closure on the Special Event application.

2. Approval is contingent upon ensuring adequate signage and barricades, a traffic control plan and providing adequate emergency access at all times to the satisfaction of the Community and Support Services department or designate.

3. To request a temporary street closure, the applicant may be asked to submit a petition signed and approved by 100% of the business and residence owners or habitants of adjacent properties on the affected street(s) or block(s).

4. In the event an emergency vehicle must enter the closed area, a minimum sixteen (16) foot wide road clearance must be maintained.

5. The applicant or designee must be present on the site during the entire duration of the street closure.

6. Possession and/or consumption of alcoholic beverages on the closed portion of the street is prohibited, unless approval is granted by motion and order by the City Council.

Noise Policy

1. Noise issues will fall subject to the guidelines set forth in Article 8.07 of the Sherman Code of Ordinances.

2. The creating of any unreasonably loud, disturbing and unnecessary noise within the corporate city limits of the city is prohibited.

3. Any noise of such character, intensity or duration as to be detrimental to the life or health of any individual, or in disturbance of the public peace and welfare, is prohibited.

4. The maintenance or operation of any loudspeaker or amplifying device on the outside of any building or structure in the city whereby music, speaking or noises of any type are or may be transmitted outside the confines of a fully enclosed stone or wood structure is prohibited.

5. The amplification of sound for special events will be limited to the hours of 8:00a.m. until 9:00p.m., per City Ordinance.

Garbage/Recycling/Site Cleanup/General Maintenance

1. The special event organizer is responsible for the cleanup of the location to the satisfaction of the Community and Support Services Director or designee and the removal of all garbage by noon the day after the event ends.

2. The City will provide all normal maintenance services to its current routine standards including, but not restricted to, grass cutting, snow and ice clearing and any regular janitorial services and supplies at the event location before and during the event. Any additional maintenance required by the special event organizer prior to or during the event, may be at the cost and responsibility of the special event organizer.

3. The City of Sherman will not supply any additional garbage containers over and above the current level for special events, without prior notification. It will be the sole responsibility of the special event organizer to notify the City of collection service needs for the event. Additional fees may be required for additional services.

4. The special event organizer will use recycling containers for beverage cans and bottles.

5. Each event should have the same number of recycling containers as garbage containers and place them appropriately throughout the site.

6. The special event organizer will ensure that a suitable location is provided for food and merchandise vendors to place flattened corrugated cardboard boxes. These will be kept separate from any other recyclables or garbage.

Miscellaneous Requirements

1. Bathroom Facility Requirements

A. The following should be considered when determining the number of toilets to provide at your event.

- Duration of the event
- Weather conditions
- Crowd size, and
- Ticketed or unticketed event.

Where local laws or regulations do not exist, the following table can be used as a guide. Assume a 50/50 male/female split unless otherwise advised.

Crowd Size	Number of Facilities Necessary (dependent on event hours)								
	1	2	3	4	5	6	7	8	9
500	2	4	4	5	6	7	9	9	10
1,000	4	6	8	8	9	9	11	12	13
2,000	5	6	9	12	14	16	18	20	23
3,000	6	9	12	16	20	24	26	30	34
4,000	8	13	16	22	25	30	35	40	45
5,000	12	16	20	25	31	38	44	50	56
10,000	15	25	38	50	63	75	88	100	113

B. A copy of the contract with the Waste Disposal Company must be provided to the Community and Support Services Department no less than 14 days prior to the event.

- Note: the special event coordinator must ensure all washroom/hand wash stations are kept stocked with toilet paper and hand sanitizer.

C. There should be a minimum of one handwashing station with hot/warm water, liquid soap and paper towels immediately adjacent to the bathroom facilities. Washrooms in nearby stores or restaurants are not sufficient. The use of antiseptic hand gels can be used, but it is a good practice to have one handwashing station in case the need arises. The handwashing facilities must be accessible to all event attendees.

D. For more information on portable bathroom facilities please visit the Portable Sanitation Association website at www.psai.org/about.html.

2. Vendors

A. In the interest of public safety, a zero tolerance policy is enforced for all special events. This means failure to comply with standards may result in ticketing and/or closure.

B. All vendors will be required to ensure:

- All outdoor electrical cords used are in good operating condition.
- The use of manufactured extension cords with a three wire configuration or 2 wire polarized outdoor rated cords are acceptable (no modification to cords or equipment is permitted).
- The use of panels that are properly assembled and contained in an approved weatherproof enclosure supplying 15 and 20 amp receptacles only which are protected by Ground Fault Circuit Interrupters.
- Any non weatherproof equipment used in display enclosures (tents, gazebos etc) shall be protected from inclement weather.
- All vendors shall supply the event organizer with the voltage and current that their equipment will require to eliminate overloading of circuits.
- All trailers that are self contained and/or have lighting and equipment may be subjected to a field evaluation by the City of Sherman.

3. Food Vendors

A. The City of Sherman has adopted the provisions of the current rules or rules as amended by the state board of health found in 25 Texas Administrative Code, chapter 229, sections 161 through 171 and 173 through 175, regarding the regulation of food establishments in this jurisdiction.

B. All food vendors must have a temporary food permit.

C. For further information regarding permitting of food vendors please contact the Grayson County Health Department.

4. Alcohol & TABC Licensing

A. The drinking of any alcoholic beverages or the possession of any open container which contains an alcoholic beverage is prohibited and unlawful in the following places:

- In any public park; on the sidewalks, streets and alleys; on any public parking lot; the Ham Center and the Youth Center.
- In or on any public school district campus or facility.

- On any private parking lot of any shopping center or any parking lot of any retail or commercial business.
- In any theatre building and/or drive-in theater within the corporate limits of the city.

B. An alcoholic beverage is defined as any spirits, wine, beer, ale or other liquid containing more than one-half of one (1) percent alcohol by volume.

C. Event organizers must acquire the appropriate temporary permit from the TABC for all events where alcohol will be consumed. If a letter of permission is needed from the City, the request must be made no later than 2 (two) weeks prior to the event date.

5. Petting Zoos or Open Farms

A. Your petting zoo or farm is designed to provide children and students with the joy of coming close to animals. You must remember, however, animals can carry diseases that can make humans ill, and proper precautions must be taken to ensure that the health and safety of all visitors are protected, especially children.

B. For the safety of attendees, the City of Sherman requires the following:

Handwashing:

- Staff/Volunteers must encourage all visitors to wash their hands after handling the animals and before consuming food or drinks.
- There should be a minimum of one handwashing station with hot/warm water, liquid soap and paper towels immediately adjacent to the animal petting area. Washrooms in nearby stores or restaurants are not sufficient.
- The use of antiseptic hand gels can be used, but it is a good practice to have one handwashing station in case the need arises.
- Temporary handwash stations should be installed when permanent facilities are not immediately available.
- The exit to the animal area should be controlled to ensure that all participants pass by the handwash facilities and can use them if they choose.
- Handwashing facilities must be accessible to all visitors.

Operation:

- The public should not be permitted access to any animal enclosure except under the direct supervision of trained personnel. These enclosures should be kept locked outside of regular business hours.

- Ensure that any manure is quickly and thoroughly cleaned up, and appropriately discarded. Straw and sawdust bedding should be replaced at least daily.
- Staff/Volunteers must report all animal bites or scratches, or other injuries resulting from animal contact to Sherman Police Dispatch at 903-892-7290.

Animals:

- Potentially dangerous animals should not be included in a petting zoo. Reptiles and amphibians are not recommended.
- All animals must be in good health, and any animals with diarrhea must be excluded from display immediately.
- All animals must have up to date vaccinations for diseases applicable to the region. Vaccination records must be readily available when requested.
- All animals must have a friendly disposition, and must be comfortable with extensive petting or handling.

Signs:

- Ensure signs are erected at the entrance of the petting zoo or farm encouraging the act of washing hands upon leaving the animal area and before eating.

Sherman
CLASSIC TOWN. BROAD HORIZON.

Special Event Application

This agreement is between the City of Sherman, hereinafter referred to as City, and an event/event coordinator, hereinafter referred to as event, for the cooperation of planning and operating a Special Event.

City reserves the right to close down or cancel any Event that is in violation of any City Ordinance or deviation from this agreement. The City also reserves the right to close down or cancel the Event if public safety or affected department supervisors deem the event unsafe for public participation.

- Application must be submitted at least 60 days prior to the event date.
- The Event must carry property, bodily injury and municipal liability insurance of $1,000,000.00 per occurrence. The City of Sherman must be shown as an additional named insured on the insurance declaration. One (1) original copy of insurance must be submitted 30 days prior to event date.
- Alcohol distribution or consumption in any City Park and/or street is prohibited, unless approval is granted by motion and order by the City Council. A special event permit for alcohol on private property in conjunction with a Sherman private club may be permitted with a T.A.B.C license. Certain city-owned properties may allow for the consumption of alcohol.
- Please provide all information pertaining to the event as accurately as possible.

General Event Information

Official Name of Event: Black History Month Freedom Parade

Type of Event: (i.e. Carnival, Circus, 1 Mile/5 K Run, etc.) Downtown Sherman Parade

Event Date: Saturday, February 11, 2023 Event Times: 10 am

Alternate Date: none Event Times: _____

*Alternate date required in case of weather delays

Location of Event: Downtown around the Square

Event Contact Name: Jan Fletcher

Event Contact Address: 1050 Hazelwood Road

Event Contact Phone: 972-897-5796

Event Contact Email: jans_melodies@msn.com

Alternate Event Contact Name: Sunshine Palmer

Alternate Event Contact Address: _____

Alternate Event Contact Phone: 903-209-6617

Alternate Event Contact Email: _____

Event Day Emergency Contact: Jan Fletcher Phone: 972-897-5796

Event Day Emergency Contact: Sunshine Palmer Phone: 903-209-6617

Estimated # of Participants: 35+ Entries Spectators: unknown, but hopefully large

Is Event Private or Open to the Public? _____ Private Event X Public Event

Description of Event

Include background/history of this event or type of event and a timeline of event. Maps and site plans are required; site plans should include location of concessions, port-a-lets and dumpsters; description of routes to be used, severe weather emergency plan, etc. Clean-up deposit may be required.

Same as Christmas Parade

Public Services

Will event take place at a public park/facility? _____ Yes X No

If yes, which park/facility? _____

*Park and/or facility reservation(s) required prior to completing this application.

Will you need any public street closures? X Yes _____ No

If Yes, which streets? similar to Christmas parade...

N Montgomery St @ E Wall St to N Travis St to E Lamar St to S Crockett St to W Wall St to beginning of N Montgomery & E Wall

*Closure of TxDOT controlled streets will need prior approval by TxDOT.
*Police and Fire vehicles must have access through street closures if the need arises.

Street closure time: 9:45 am Time closure removed: 10:40 am estimate

*Barricades will be provided by the City for the listed street closures. Fees may be required for additional barricade requests.

Where are the parking areas located: (Include on site plan) _____

Does your event require special/additional support? (Fee may be required)

X Police
(crowd control, traffic control, etc.)
If yes, contact Jarena Capps, Police Department, 903-892-7397

____ Fire Department
(EMT Support, etc.)
If yes, contact Chief Jones, Fire Department, 903-892-7263

____ Other
(provide detail)

If any special/additional support is checked above it is the responsibility of the event coordinator to contact the person listed above, prior to approval. If no contact is made by the event coordinator, the approval process for your special event will cease.

Number of trash containers and size requested over and above the current level: n/a

*Per city ordinance, all solid waste services must be provided by the city. Additional fees are possible for solid waste services.

Concessions

Will food concessions be present at the event? _____ Yes X No

Name, Address & Phone Number for Food Vendors: _____

_____

_____

_____

*All food vendors are required to have the appropriate permits required by the city or the county.

Fire Prevention

Will you have any tents at the event? _____Yes X No

Will any tents be over 200sq. ft.? _____ Yes _____ No

*No smoking signs and 5lb. ABC extinguishers are required in all tents over 200sq. ft.

Will any tents be enclosed? _____ Yes _____ No

*A permit ($50.00 fee) must be obtained from the Developmental Services Department for enclosed tents.

*A flame certificate for the tent and a site plan showing the setback from the property lines will be required to obtain this permit.

Will you have bounce houses? _____ Yes X No Number: _____

Will you have other air supported structures? _____ Yes X No

Will there be fireworks? _____ Yes X No

Will there be any temporary structures built or placed on site? _____ Yes X No

If Yes, describe: _____

_____

_____

Miscellaneous

Will you need the use of city water and/or electricity? _____ Yes X No

*Additional fees will apply to the usage of city utilities

Where will restroom facilities be located? n/a

_____

_____

*Depending on accessibility of restroom facilities, city may require portable toilets to be used

Will there be music or any other use of a loudspeaker? X Yes _____ No

If Yes, please fill out the following: All unknown based on bands and floats using music

Type of loudspeakers: _____ How many: _____

Type of Amplifiers: _____ How many: _____

Type of electrical devices: _____ How many: _____

Date and time loudspeakers/amplifiers/electrical devices will be in use: 10 am - 10:40 am est

*Loudspeakers/Amplifiers/Electrical Devices cannot be used during the hours of 9pm to 8am

Will you have any animals at the event? X Yes _____ No

If yes, are any prohibited/regulated animals? Possibly horse groups and/or dogs

*All pet owners must abide by Grayson County leash law

Public Information

Describe signage that will be used for the event, to include placement of signs: our signs will be on vehicles and/or banners in front of entries

Describe how you will notify residents affected by the event either living on the route/course or nearby. Social Media

*Proof of notification may be required

Overnight Accommodation Needs

Will event produce overnight stays in Sherman hotels, motels or bed and breakfasts? If so, how many rooms potentially? not that I'm aware of

* The Sherman Chamber of Commerce is available for assistance with hotel information and accommodation needs for the event.

Agreement:

Initial I hereby attest that the information contained in this application is true and correct. I understand that this is only an application and not a guarantee that a permit will be issued. If a permit is issued, I agree that: (1) if any of the information contained in this application is found to be false: or (2) should my conduct, or the conduct of any participants or guests, not adhere to the Special Event Policies and Procedures: or (3) should any applicable city, county, state or federal rules, regulations, codes or laws be violated, any permit issued shall automatically become null and void and any activity associated with this permit will immediately cease.

Initial Applicant agrees to assume the defense of and indemnify and save harmless the City, its council members, boards, commissions, officers, employees and agents, from all suits, actions, damages or claims to which the City may be subjected of any kind or nature whatsoever resulting from, caused by, arising out of or as a consequence of such temporary street closure and the activities permitted in connection therewith. The city may require, as a condition of issuance of a permit, that the applicant obtain insurance to serve this end, in such an amount and with such terms as the City determines to be appropriate under the circumstances. This shall be a continuing release and shall remain in effect until revoked in writing.

Initial In case of emergency or for reasons beyond the City's control, the City reserves the right to cancel the permit prior to scheduled use without liability. Refunds will be made if cancellation by the City is necessary.

Initial Alcohol must be confined to private property. Alcohol consumed on Public property is a violation of city Ordinance and is prohibited.

Signature:

I the undersigned representative have read the policies and procedures with reference to this application. The information contained herein is complete and accurate.

Signature

11/25/22

Date

For Office Use Only

DEPARTMENT APPROVALS

DEPARTMENT	DATE	SIGNATURE
City Council Approval		
Fire Department		
Police Department		
Public Works Department		
Solid Waste & Recycling Department		
Parks & Recreation Department		

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Special Event
Date Request Form

Name of Event: Black History Month Freedom Parade
Type of Event (i.e. Carnival, Circus, Festival, 1 Mile/5 K Run, etc.):
Parade with school bands, floats, vehicles, organizations and the Freedom Bus
Location of Event: Downtown Sherman around the County Courthouse
Date of Event: Saturday, February 11, 2023 in the morning
Event Contact Name: Jan Fletcher
Event Contact Address: 1050 Hazelwood Road; Sherman 75092
Event Contact Phone: 972-897-5796
Event Contact Email: jans_melodies@msn.com

Completion and approval of the Special Event Date Request Form does not guarantee event approval. The Community and Support Services Department must receive the completed Special Event Application 60 days prior to the event date. If the application is not received the date will be released 60 days prior to the event.

Requester Signature: Jan L. Fletcher Date: Nov 18, 2022

*Office Use Only
Date Request Received:
Event Date Hold Approved: YES NO
If NO, reason:
Date 60 Days Prior to the Event Date:
Date Special Event Application Received:
Requested Event Date Released: YES NO Date:
Community and Support Services Department Signature:

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **G. 1.**

Meeting Date: 01/17/2023
Prepared By: Linda Ashby, City Clerk
Approved By: Robby Hefton, City Manager

Caption:

APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS

(a) Keep Sherman Beautiful Commission (5)

Issue:

Ronald Engelke and Ragendra Wagle's terms on the Keep Sherman Beautiful Commission expired on January 1, 2023. They are both eligible and Mr. Engelke does wish to be reappointed. Mr. Wagle has not indicated whether or not he wants to be reappointed at this time. There are also four vacancies on this board. We currently have applications for service on this board from Karla Vessels, Allen Martin, and Rhonda Corley. One of the new appointments will be to fill an unexpired term until April 5, 2024.

Background:

The Keep Sherman Beautiful Commission promotes public interest in the general improvement of the environment of the City, and initiates, plans, directs, and coordinates programs in conjunction with and in cooperation with citizens, government, businesses, and industries within the City.

Origination:

The appointments originated with the City Clerk's Office.

Financial Consideration:

There is no financial consideration to the City.

Staff Recommendation:

The staff's recommendation is to reappoint Mr. Engelke, and to appoint Ms. Vessels, Mr. Martin, and Ms. Corley to the Keep Sherman Beautiful Commission.

Alternatives:

The Council could choose not to make appointments to the Keep Sherman Beautiful Commission.

Attachments

Roster
Fact Sheet
Applicant List
Ronald Engelke Reappointment Letter
Karla Vessels Application
Allen Martin Application
Rhonda Corley Application

MEMBERSHIP ROSTER

KEEP SHERMAN BEAUTIFUL COMMISSION **LENGTH OF TERMS: 2 Years**
Ord. 4112 Consecutive Term Limit (3)*effective 7/24/89

MEMBER	DISTRICT	TERM BEGINS	TERM EXPIRES	TERMS	MEMBERSHIP REQUIREMENTS
Vacant					2 Year Term
Sarah Richardson	4	A 3/17/2020 R 3/17/2022	3/17/2022 3/17/2024	1 2	2 Year Term
Vacant			4/5/2024		2 Year Term
Renea Valita Fornof-Dennington	4	A 9/8/2021	9/8/2023	1	2 Year Term
Ronald Engelke	3	A 5/7/2019 R 1/1/2021	1/1/2021 1/1/2023	1 2	2 Year Term
Nathaniel Lightfoot	3	A 3/17/2020 R 3/17/2022	3/17/2022 3/17/2024	1 2	2 Year Term
Rajendra Wagle	4	A 5/7/2019 R 1/1/201	1/1/2021 1/1/2023	1 2	2 Year Term
Vacant					2 Year Term
Vacant			9/8/2023		2 Year Term

NOTE: All members shall be appointed for terms of two (2) years, and shall not serve for more than three (3) consecutive terms.

*** Initially the terms will be for more than two years, in order to meet Article II, Section 2 of the By-Laws, stating that new terms begin on January 1 of each year.**

Chairperson
NOTE: Chairperson serves one year terms

CHAIR	APPOINTMENT DATE	DATE CHAIR EXPIRES	YEARS SERVED AS CHAIR
Lauren Roth	11/5/2013	1/1/2015**	1
Zac Grantham	1/1/2016	1/1/2017	1
Zac Grantham	1/1/2017	1/1/2018	2
Zac Grantham	1/1/2018	1/1/2019	3
Amanda Smith	1/1/2019	1/1/2020	1

**** Initially the Chairperson's term will be for more than one year, in order to meet Article II, Section 2 of the By-Laws, stating that new terms begin on January 1 of each year**

FACT SHEET

KEEP SHERMAN BEAUTIFUL COMMISSION

Established by RESOLUTION 2805 – MARCH 2, 1992 – RE-ESTABLISHED BY RESOLUTION 3807 – APRIL 19,1999; RE-ESTABLISHED BY RESOLUTION 5041 – JULY 16, 2007; BY-LAWS UPDATED BY RESOLUTION 5977 – JUNE 15, 2015

1. **Number of Members: NINE (9)**
2. **Term of Appointment: TWO (2) YEARS**
3. **Consecutive Term Rule: THREE YEARS**
4. **Qualifications for Membership: INTEREST IN KEEPING SHERMAN BEAUTIFUL; DEDICATION TO IMPLEMENTATION OF ASSIGNED PROJECTS**
5. **Appointed by: MAYOR AND CITY COUNCIL**
6. **Board Organization**

CHAIRPERSON A VICE CHAIRPERSON E SECRETARY E

ELECTED ___ APPOINTED ___

7. **Departmental Responsibility: CITY MANAGER**
8. **Meeting Date: BI-MONTHLY AT 5:30 P.M. OR WHEN CALLED**
9. **Attendance Requirements: IF A COMMISSION MISSES TWO MEETINGS WITHOUT NOTICE AND/OR WITHOUT GOOD CAUSE WITHIN A CALENDAR YEAR, AFTER WRITTEN NOTIFICATION BY THE CHAIRMAN, HE/SHE SHALL AUTOMATICALLY RELINQUISH HIS/HER PLACE ON THE COMMISSION**

==========

PURPOSE:
Commission shall function to assist the City Council and the City staff by involving individuals, businesses, and industries throughout the community to promote education and activities and encourage waste reduction, litter prevention, and beautification programs and projects in affiliation with the Keep Texas Beautiful objectives.

RESPONSIBILITIES:
(1)To plan, initiate, direct, and coordinate community-wide efforts to achieve its goals
(2) To solicit and accept donations and appropriations for money, service, products, property, and/or facilities expenditure and use by the Commission for the accomplishment of its objectives as approved by the City Council
(3) To make recommendations to the City Council, as well as to the private sector, regarding measures which it deems necessary to accomplish the objectives of both the City and the Commission.

APPLICANT LIST

Keep Sherman Beautiful Commission **Positions Vacant 5**

Applicant	Address	District	Qualifications
Ronald Engelke	116 N. Burdette	3	Current Member; Wishes to be Reappointed
Karla Vessels	1720 Creekside Drive	4	Texoma Community Center
Allen Martin	209 Arapaho East	4	Fairway Independent Mortgage
Rhonda Corley	800 N. Elm	1	The Yoga Studio

COMMENTS:

Sherman
CLASSIC TOWN. BROAD HORIZON

City Clerk's Office

PUBLIC RECORDS DEPARTMENT
Phone No. (903) 892-7204
Fax No. (903) 892-7394

January 11, 2023

Ronald Engelke
116 N. Burdette
Sherman, Texas 75090

RE: Keep Sherman Beautiful Commission

Dear Mr. Engelke:

Your term on the Keep Sherman Beautiful Commission expired on January 1, 2023. You are eligible for reappointment to the Board. Please let me know whether or not you are interested in reappointment to this board by checking the appropriate statement at the bottom of this letter and returning a copy to me at the address below. If you have any questions or need additional information, please don't hesitate to contact me.

Best regards,

Linda Ashby

Linda Ashby
City Clerk

cc: Sarah McRae, Tourism/Main Street Manager

X I do wish to be considered for reappointment to this board

_____ I do not wish to be considered for reappointment to this board

Ronald Engelke
Signature

1-11-2023
Date

Please return to: City of Sherman
City Clerk's Office
P.O. Box 1106
Sherman, Texas 75091-1106

RECEIVED
DEC 07 2022
City Clerk's Office

CITY OF SHERMAN
APPLICATION FOR BOARD OR COMMISSION MEMBERSHIP

Return completed application to:
City Clerk's Office
220 W. Mulberry
P.O. Box 1106
Sherman, TX 75091
Fax: (903) 892-7394

Please type or use black ink
Please complete one application for each board or commission membership
Please limit attachments to two pages
For questions or additional information, call the City Clerk's Office, (903) 892-7206

Name: Karla Vessels
(Please print legal name and your name as you wish it to appear, if different.)

Name of Board or Commission: Keep Sherman Beautiful

☒ Yes, I would be interested in serving on subcommittees that may be formed.

Personal Information

Home Address: 1720 Creekside Ave. Sherman, Texas 75092
Mailing Address: 1720 Creekside Ave. Sherman, Texas 75092
Telephone: 903-744-5240 Fax:
E-Mail: karlavessels@icloud.com
Sherman Resident for 50 years County: Grayson
Drivers License No.: 14445714
Voter Registration No.: 115595 ✓

Occupational Information

Business Name: Texoma Community Center
Occupation: Peer Recovery Support Specialist
Address: 315 W. McLain Sherman, TX 75092
Telephone: 903-357-2184 Fax:
E-Mail: kvessels@texomacc.org

Which Council District do you live in? *(see attached map)* District 4 ✓

Prior work experience: *(please include dates)*
City of Gainesville, Finance Dept. 2015-2017
Lynn Vessels Construction, Office Manager 2009-2016

Educational Achievement:
High School Graduate? ☒ Yes ☐ No Year Graduated/Left School? 1990
Business College, Correspondence School, Adult Education, Other? Associates Degree in Applied Science
Name of College/University: Grayson County College ☐ Bachelor's ☐ Master's ☐ PhD

Volunteer Work: *(please include dates)*
The Refuge 2019-current

Have you ever been convicted of a crime (except for minor traffic offenses that resulted only in a fine)? ☒ Yes ☐ No

If yes, please explain in complete detail. State the nature and approximate date of the conviction, the sentence imposed, whether the sentence has been completed, and any other information you consider to be relevant.

Poss. of Controlled substance 2017, 4 years TDC, on parole until 2/2023. I have been in recovery for 4 years and now am a Recovery Coach. I work daily with people of the community helping them to be successful on their recovery journey. I stay active with my own recovery and hold many service positions various recovery groups on a local and state level.

Application held for 12 months from date received

Taxes- None

Are you presently serving on a City board or commission? ☐ Yes ☒ No

If so, which one? _____

Why do you want to become a member of this particular board or commission *(how would you use this experience to benefit the City)*?

I want to give back to the City of Sherman, I have lived here my entire life and I want to help by being involved in the community.

Briefly explain what you believe are the three most important issues facing this board or commission and how you believe this board or commission should address each issue?

1) Trash around the City.

2) Getting the community involved. Networking and telling others about this board.

3)

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:

I am great working with all types of people. I have a very positive outlook.

Please specify any business or personal relationships with the City or other activities, which might create a serious conflict of interest or affect your ability to serve if you should be appointed to this board or commission:

none

Have you attended a meeting of the board/commission you are applying to or talked to anyone currently on the board? ☒ Yes ☐ No

Comments: Nate Lightfoot-Cantrell

Statement of Intent

I am aware of the requirements of the City regarding conflicts of interest of appointees to the City of Sherman Boards and Commissions, as noted in the overview. I am aware of meeting dates and times of the Board/Commission for which I have applied, and that Board/Commission members are expected to attend a minimum of 75 percent of regularly scheduled meetings annually of their Board/Commission. If appointed, I agree to serve on the Board/Commission for which I have applied. Applications, including those received after the posted deadline, will remain on file for one year from the date of receipt.

Signature: Kara Ulrich *Date:* 12/7/2022

In compliance with Chapter 552, Vernon's Texas Codes Annotated (Open Records Law), information provided on this application may be available to the public, upon request.

Sherman
CLASSIC TOWN. BROAD HORIZON.

CITY OF SHERMAN
APPLICATION FOR BOARD OR COMMISSION MEMBERSHIP

RECEIVED
DEC 2021
CITY CLERK'S OFFICE

Return completed application to:
City Clerk's Office
220 W. Mulberry
P.O. Box 1106
Sherman, TX 75091
Fax: (903) 892-7394

Please type or use black ink
Please complete one application for each board or commission membership
Please limit attachments to two pages
For questions or additional information, call the City Clerk's Office, (903) 892-7206

Name: Allen Martin
(Please print legal name and your name as you wish it to appear, if different.)

Name of Board or Commission: Keep Sherman Beautiful

☒ Yes, I would be interested in serving on subcommittees that may be formed.

Personal Information

Home Address: 209 Arapaho E Sherman 75092
Mailing Address: same
Telephone: 903-513-9605 Fax:
E-Mail: allenmartin1714@gmail.com
Sherman Resident for 12 years County: Grayson
Drivers License No.: 18080589
Voter Registration No.: 1161550481 ✓

Occupational Information

Business Name: Fairway Independent Mortgage
Occupation: Mortgage Loan Officer
Address: 12302 FM 121, Van Alstyne 75495
Telephone: 903-513-9605 Fax:
E-Mail: allen.martin@fairwaymc.com

Which Council District do you live in? *(see attached map)* 4 ✓

Prior work experience: *(please include dates)*

Educational Achievement:

High School Graduate? ☒ Yes ☐ No Year Graduated/Left School? 2002
Business College, Correspondence School, Adult Education, Other?
Name of College/University: A&M - Commerce ☒ Bachelor's ☐ Master's ☐ PhD

Volunteer Work: *(please include dates)*
Grand Central Station - 2nd Tues of every month

Have you ever been convicted of a crime (except for minor traffic offenses that resulted only in a fine)? ☐ Yes ☒ No

If yes, please explain in complete detail. State the nature and approximate date of the conviction, the sentence imposed, whether the sentence has been completed, and any other information you consider to be relevant.

Taxes - Current

Application held for 12 months from date received

Are you presently serving on a City board or commission? ☐ Yes ☒ No

If so, which one? _____

Why do you want to become a member of this particular board or commission *(how would you use this experience to benefit the City)*?
I feel like one of the most important things to have is a beautiful yard. I would love to extend that to Sherman with my experience with plants and landscaping. I know Sherman has so much more potential and I would to be a part of that growth.

Briefly explain what you believe are the three most important issues facing this board or commission and how you believe this board or commission should address each issue?

1) Trash all over town - I would like to focus on keeping trash pick ups going. I have ideas on how to help.

2) I appreciate the planters that are now in downtown. I feel like we could do even more.

3) I want to be apart of something to help people love Sherman.

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:
I have coordinated fundraisers for non-profits and YPN of the realtor association

Please specify any business or personal relationships with the City or other activities, which might create a serious conflict of interest or affect your ability to serve if you should be appointed to this board or commission:

N/A

Have you attended a meeting of the board/commission you are applying to or talked to anyone currently on the board? ☐ Yes ☒ No

Comments: _____

Statement of Intent

I am aware of the requirements of the City regarding conflicts of interest of appointees to the City of Sherman Boards and Commissions, as noted in the overview. I am aware of meeting dates and times of the Board/Commission for which I have applied, and that Board/Commission members are expected to attend a minimum of 75 percent of regularly scheduled meetings annually of their Board/Commission. If appointed, I agree to serve on the Board/Commission for which I have applied. Applications, including those received after the posted deadline, will remain on file for one year from the date of receipt.

Signature: _____ *Date:* 12/7/22

In compliance with Chapter 552, Vernon's Texas Codes Annotated (Open Records Law), information provided on this application may be available to the public, upon request.

Sherman
CLASSIC TOWN. BROAD HORIZON.

RECEIVED
JAN 09 2023
City Clerk's Office

CITY OF SHERMAN
APPLICATION FOR BOARD OR COMMISSION MEMBERSHIP

Return completed application to:
City Clerk's Office
220 W. Mulberry
P.O. Box 1106
Sherman, TX 75091
Fax: (903) 892-7394

Please type or use black ink
Please complete one application for each board or commission membership
Please limit attachments to two pages
For questions or additional information, call the City Clerk's Office, (903) 892-7206

Name: RHONDA CORLEY
(Please print legal name and your name as you wish it to appear, if different.)

Name of Board or Commission: KEEP SHERMAN BEAUTIFUL

☒ Yes, I would be interested in serving on subcommittees that may be formed.

Personal Information

Home Address: 800 N. ELM ST
Mailing Address: SAME
Telephone: 903-714-4271 Fax: _____
E-Mail: RHONDACORLEY@YAHOO.COM
Sherman Resident for 38 years County: GRAYSON
Drivers License No.: 09604389 TX
Voter Registration No.: 21662 ✓

Occupational Information

Business Name: THE YOGA STUDIO
Occupation: YOGA INSTRUCTOR
Address: 2114 TEXOMA PKWY STE 150
Telephone: 9032714271 Fax: _____
E-Mail: _____
The United Way Grayson part-time.

Which Council District do you live in? *(see attached map)* Dist. 1 ✓ Shawn Teamann

Prior work experience: *(please include dates)* Marketing in Non-profit, social service & private 25 years +

Educational Achievement:

High School Graduate? ☒ Yes ☐ No Year Graduated/Left School? _____
Business College, Correspondence School, Adult Education, Other? _____
Name of College/University: AUSTIN COLLEGE ☒ Bachelor's ☐ Master's ☐ PhD

Volunteer Work: *(please include dates)*

Have you ever been convicted of a crime (except for minor traffic offenses that resulted only in a fine)? ☐ Yes ☒ No

If yes, please explain in complete detail. State the nature and approximate date of the conviction, the sentence imposed, whether the sentence has been completed, and any other information you consider to be relevant.

Taxes - None

Application held for 12 months from date received

Are you presently serving on a City board or commission? ☐ Yes ☒ No

If so, which one? _____

Why do you want to become a member of this particular board or commission *(how would you use this experience to benefit the City)*?
IM COMPLETELY EMBARRASSED AS TO THE CONDITION OF SHERMAN DUE TO TRASH ON EMPTY LOTS AND ROADWAYS

Briefly explain what you believe are the three most important issues facing this board or commission and how you believe this board or commission should address each issue?

1) A marketing plan to alert the community that this program exist should be put in place.

2) A collaboration of ideas to be implemented city wide needs to be put in place.

3) A plan to recruit volunteers needs to be put into action

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:
Marketing, PR, Press releases, volunteer coordination. Vaccaid development

Please specify any business or personal relationships with the City or other activities, which might create a serious conflict of interest or affect your ability to serve if you should be appointed to this board or commission:

None

Have you attended a meeting of the board/commission you are applying to or talked to anyone currently on the board? ☐ Yes ☒ No
Comments: _____

Statement of Intent

I am aware of the requirements of the City regarding conflicts of interest of appointees to the City of Sherman Boards and Commissions, as noted in the overview. I am aware of meeting dates and times of the Board/Commission for which I have applied, and that Board/Commission members are expected to attend a minimum of 75 percent of regularly scheduled meetings annually of their Board/Commission. If appointed, I agree to serve on the Board/Commission for which I have applied. Applications, including those received after the posted deadline, will remain on file for one year from the date of receipt.

Signature: Rhonda Corley *Date:* 1-9-23

In compliance with Chapter 552, Vernon's Texas Codes Annotated (Open Records Law), information provided on this application may be available to the public, upon request.

Sherman
CLASSIC TOWN. BROAD HORIZON.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting

Meeting Date: 01/17/2023

Approved By: Robby Hefton, City Manager

Caption:

COUNCIL CALENDAR

Attachments

2023 Council Calendar

2023
Council Calendar

January						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

February						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
11	12	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

March						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

April						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

May						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

June						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	6	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

July						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

August						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

September						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

October						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

December						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

	Holiday
	Holiday for Firefighters/Police Only
	City Council Regular Meeting
	Special Called Meeting
	Budget Workshop
	Cancelled City Council Meeting

CALLED MEETINGS	